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ORIGINAL

NO. 87-576

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987

HAROLD Y. SHINTAKU, AND ARNOLD B. GOLDEN,
Petitioners

v.

DONALD D. COWAN,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF HAWAII

APPENDIX TO THE BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

Donald D. Cowan
1655 Kanunu Street, #707A
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Respondent Pro Se

RESPONDENT'S APPENDIX

APPENDIX A

DONALD D. COWAN
Armed Services YMCA - #4060
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Honolulu, Hawaii 96813
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DEFENDANT PRO SE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII,	CR. NO. 55545
vs.	MEMORANDUM IN SUPPORT OF MOTION FOR AN ORDER DISMISSING COMPLAINT WITH PREJUDICE FOR DISCRIMINATORY ENFORCEMENT AGAINST DEFENDANT BY THE PROSECUTOR ATTORNEYS OFFICE
DONALD D. COWAN, aka DOUG COWAN,	
Defendant.	

MEMORANDUM IN SUPPORT OF MOTION FOR
AN ORDER DISMISSING COMPLAINT WITH PREJUDICE
FOR DISCRIMINATORY ENFORCEMENT AGAINST DEFENDANT
BY THE PROSECUTING ATTORNEYS OFFICE

I. EXCERPTS FROM THE JULY 10, 1980 DISTRICT COURT PROCEEDINGS AGAINST THIS DEFENDANT, THE VERDICT OF WHICH HAS BEEN SET ASIDE.

In the below quotes from the transcript, "FUKUHARA" shall here mean Deputy Public Defender Fukuhara, "YOUNG" shall mean Deputy Prosecutor Young, "SPOONE" shall mean complainant Spoone, "ELLISON" shall mean the prosecution's witness Ellison, and "BELCHER" shall mean prosecution's witness Robert Belcher.

FUKUHARA: At the point that you and your husband left the house to approach the Defendant, he was just sitting on his moped? (page 34, lines 4-6)

SPOONE: Right, the moped was on the street, and

he was sitting on it. (page 34, lines 7-8)

FUKUHARA: Jeanette, had you called the police before you and your husband went out to the street? (35, 17-18)

SPOONE: No. (35, line 19)

FUKUHARA: So, he wasn't doing anything violent or threatening at that time? (page 34, lines 9-10)

SPOONE: Right. (34, line 11)

FUKUHARA: Was he doing anything violent? (42, line 3)

ELLISON: He was doing nothing violent. (42, line 4)

FUKUHARA: Was he yelling and making a lot of noise? (42, line 5)

ELLISON: Not in that particular instance. (42, line 6)

FUKUHARA: Isn't it a fact, all he was doing was sitting on his bicycle across the street? (42, lines 7-8)

ELLISON: That's correct. (42, line 9)

SPOONE: Then as we went out the door, I picked up a large stone. It was a kind of a large rock in my yard. (28, lines 13-14)

SPOONE: ...and so I picked up the rock before I even got to the street, and I flung it. (28, lines 20-22)

FUKUHARA: Mr. Ellison, you saw your wife pick up a rock and throw it at the Defendant? (43, lines 16-17)

ELLISON: Yes, I did. (43, lines 18)

FUKUHARA: So, she picked up a rock and tried to heave it at the Defendant? (44, lines 1-2)

ELLISON: That's correct. (44, line 3)

YOUNG: Mr. Ellison, let's go back to the rock. You know how far the rock was thrown? (45, lines 24-25)

ELLISON: The rock was thrown a maximum of three feet. (45, lines 1-2)

ELLISON: ...Jeanette told me outside, he doesn't want to leave. I went across the street. He began to run down the street. I probably chased him down the street at this point... (38, lines 3-5)

FUKUHARA: You stated your husband was angry at Donald, he was chasing him around the street? (34, lines 12-13)

SPOONE: Right. (34, line 14)

SPOONE: ...Doug got off his motorscooter and started to run. (29, line 9)

SPOONE: ...so my husband gave chase to him. Mr. Cowan is a very fast runner...my husband never caught up him, ... (29, 21-23)

SPOONE: At one point Mr. Cowan did slip on the

street. There's gravel, and he slipped and skinned his elbow, and then I said to my husband because what we used to do is call the police lots of times, but he would leave before they came. I told my husband I'll push the motorscooter into our garage... (30, lines 4-8)

FUKUHARA: Isn't it true that an ambulance was called on the scene? (40, lines 20-21)

ELLISON: That's correct. (40, line 22)

FUKUHARA: Now, who summoned the ambulance? (41, line 9)

ELLISON: I have no idea...(41, line 10)

ELLISON: ...The ambulance attendants had--- Defendant Cowan went inside. (41, lines 2-3)

FUKUHARA: You know why he was there? (41, line 6)

ELLISON: He had fallen down during the chase at least twice, and had a bloody elbow. (41, lines 7-8)

II. ANALYSIS OF QUOTES CONTAINED IN SECTION I ABOVE:

Donald D. Cowan was initially assaulted by Ellison and Spoone. Defendant Cowan was sitting, being quiet, on his motorscooter, and did not threaten anyone. Complainant Spoone picked up a rock and threw it at Defendant. This action of throwing a rock is not only a form of assault, it is a form of Solicitation of a crime, of violence, by her conduct, which form of solicitation of a crime as described by Section 705-510,

Criminal Solicitation:

> (2) It is immaterial under subsection (1) that the defendant fails to communicate with the person he solicits if his conduct was designed to effect such communication.

Though Ms. Spoone claimed she was only trying to scare away Defendant, so as to avoid a confrontation between Defendant and Ellison, in truth her throwing the rock was immediately followed by Ellison chasing Defendant, and Ms. Spoone had not and did not called the police.

Terroristic threatening, harassment and assault in the third degree, and in the second degree, are also obvious crimes. Attempts to commit a crime are also crimes.

It is important that the Court note that by Ms. Spoone's testimony, Defendant received an injury before she was punched by Defendant later on in the action. (30, lines 4-8)

III. FURTHER EXCERPTS FROM THE TRANSCRIPT OF THE JULY 10, 1980 PROCEEDING AGAINST DEFENDANT, WHICH VERDICT WAS SET ASIDE.

SPOONE: ...I told my husband, let's push the motorscooter into the garage so that the police could catch him. (36, lines 1-3)

FUKUHARA: Did you tell Donald that you had called the police? (35, line 22)

SPOONE: No. (35, line 23)

FUKUHARA: But the police had not been called? (36, line 4)

SPOONE: That's true. (36, line 5)

SPOONE: I went to push the motorscooter. It

wouldn't move... (30, lines 14-15)

FUKUHARA: Now, at the point where Jeanette was struck, you were at her side? (44, lines 4-5)

COURT: Take your time and make sure. (44, line 9)

ELLISON: I was standing in close proximity within a foot and a half. (44, lines 10-11)

FUKUHARA: Were you handling the motorscooter in any way? (44, line 12)

ELLISON: No, I was not. (44, line 13)

FUKUHARA: You were trying to help her push the motorbike? (44, line 14)

ELLISON: No, I was not. (44, line 15)

FUKUHARA: ...Didn't either you or Jeannie move that bike at least several feet? (44, lines 16-17)

ELLISON: I think Jeannie moved it about a foot and a half but gave up because it was too heavy for her. (44, lines 18-19)

FUKUHARA: You were standing right next to her? (44, line 20)

ELLISON: Yes. (44, line 21)

FUKUHARA: Did you assist her in any way? (44, line 22)

ELLISON: No, I didn't. (44, line 23)

FUKUHARA: What were you doing? (44, line 24)

ELLISON: I was protecting her----(44, line 25)

ELLISON: ...I have been trying to remember how in the world he got by me to hit her. I'm really fuzzy on that. (44, lines 6-8)

ELLISON: ...At this point, she tried to push the motorscooter, and she was unable to. Jeannie couldn't push it, and she released her hand from it. I turned to, I think at this point my memory is a little fuzzy about that particular time frame, and then I turned back around...(39, lines 3-7)

SPOONE: ...It wouldn't move...and by this time the guys were running back towards the motorscooter, Doug ahead of my husband...then Doug came running up and hit me...(30, lines 14-19)

FUKUHARA: Now, was both Jeannie and her husband both right against the bike? (49, lines 17-18)

BELCHER: They were standing on one side of the bike together, and Doug was standing on the other side of the bike, and I would say they were all in very close proximity. Everyone was right next to each other. (49, lines 19-22)

YOUNG: And approximately how long did this happen? Was it a minute or two minutes that ;you were watching this?

BELCHER: Possibly a minute, maybe it was that long.

FUKUHARA: As you were backing out in your van,

you said you watched what was going on with the parties for a minute? (49, lines 5-6)

BELCHER: It would have been that long. (49, line 7)

YOUNG: And you had a clear view of all this? (48, line 7)

BELCHER: It was perfectly framed in my rear view mirror because it was a van. It was a large mirror. There was plenty of light from the street lights that was nearby. (48, lines 8-10)

FUKUHARA: At the point that you came out, did you see Mr. Ellison chasing Donald Cowan? (50, lines 4-5)

BELCHER: No. (50, line 6)

FUKUHARA: How long have you known Jeannie Spoone? (50, line __)

BELCHER: She's my neighbor, around two years. (50, line 11)

FUKUHARA: Did you see a motorbike in the vicinity of the three people? (49, lines 12-13)

BELCHER: Yes, it was between them. (49, line 14)

YOUNG: Did you see Jeannie trying to push his bike? (48, 12)

BELCHER: No. I didn't see that. (48, line 3)

FUKUHARA: Was anybody touching the bike? (49, line 15)

BELCHER: I couldn't tell ...(49, line 16)

FUKUHARA: So, do you know if the bike had been moved by Jeannie and her husband? (49, lines 23-24)

BELCHER: I have no idea. (49, line 25)

FUKUHARA: At the point that you were struck, how far away was your husband? (33, lines 10-11)

SPOONE: I'm kind of vague on that because they were coming back at me,...(33, lines 12-13)

ELLISON: I was standing in close proximity within a foot and a half. (44, lines 10-11)

FUKUHARA: Were you handling the motorscooter in any way? (44, line 12)

ELLISON: No, I was not. (44, line 13)

FUKUHARA: Was your husband handling the moped in any way at this point? (33, lines 17-18)

SPOONE: No, not to my knowledge... (33, line 19)

BELCHER: ...I could see all three of them in my rear view mirror, and being that I watched them for a while, and then I saw Doug reach over and punch Jeannie in the face. (47, lines 14-17)

IV. ANALYSIS OF QUOTES FROM TRANSCRIPT CONTAINED IN SECTION III HEREIN:

Somebody's lying. All three of them, i.e., Spoone, Ellison and Belcher. There is a conspiracy to falsely convict Defendant through the means of perjury. But too many hands spoil the soup.

The Defendant will not further analyze the above material further prior to trial, if it should occur, for the

obvious reason that a conspiracy to commit perjury is present and ongoing, and such analysis now might aid them.

Even with the lying that all three of them are doing, it can still be proven, from their own testimony, that Ellison and Spoone, after violently assaulting Defendant, were standing in the proximity of the motorscooter, right next to it, with Ellison and Spoone on one side and Defendant on the other. It is proven that Spoone did attempt to push the motorscooter, and by Ellison's testimony she pushed it one and one half feet. This is not to say that Ellison and Spoone are not lying through their teeth--they are. But proving that they are lying is trial stuff this Defendant doesn't want to get into in this memorandum.

It is proven that Defendant did not strike anyone until after the motorscooter had been pushed by Spoone. It is proven that Ellison was Spoone's accomplice in that, at lest, he was protecting her while she was pushing it, by his own testimony. We especially know that Spoone, the Complainant, is lying. We know this from this testimony that all three of them are "hazy" regarding events in this one critical minute of action. Notable is that witness Belcher, claiming he had a good ringside seat, with good lighting, and a large rear view mirror, "didn't see" Ellison chasing Defendant, or Spoone attempting to push or actually pushing Defendant's motorscooter one and one half feet--even though Ellison and Spoone testified that this had occurred.

V. FURTHER EXCERPTS FROM THE TRANSCRIPT OF THE JULY 10, 1980 PROCEEDING AGAINST DEFENDANT, WHICH VERDICT WAS SET ASIDE.

ELLISON: ...I had heard her being hit because it

made a very loud noise. And at this point, the Defendant Douglas Cowan took off running. My neighbor from across the street, who had been sitting in a van, jumped out of the van and chased him as well. (39, lines 9-12)

YOUNG: What happened after Jeannie was hit? What did you do? (48, lines 11-12)

BELCHER: I sat in the van for a couple of minutes just completely amazed at what I saw. And then I saw Jeannie walking around toward the front of my van, and she was holding the side of her face with her head down appearing to be distressed. At that point, I got out of my van, and I went to see if I could aid her...and Doug at this time was avoiding Mr. Ellison. (48, lines 13-20)

YOUNG: And then when he hit you, what happened next? (31, line 1)

SPOONE: ...I just went down. (31, line 2)

SPOONE: ...My husband said, are you okay? I said, no, I'm not. All of a sudden the neighbors were involved, Bob Belcher. All of a sudden Mr. James Belcher----started chasing Doug down the street in the opposite direction. (31, lines 5-8)

YOUNG: Okay, did you eventually get back to Jeanie? (39, lines 16-17)

ELLISON: Yes I did. (39, line 18)

FUKUHARA: Did you and your father chase Donald Cowan? (50, line 12)

BELCHER: Yes, we did. (50, line 13)

FUKUHARA: Were you and your father using, holding anything while you were chasing Donald Cowan? (50, lines 22-23)

BELCHER: I was. (50, line 24)

FUKUHARA: What were you carrying in your hand? (51, lines 2-3)

BELCHER: I had a------walking cane.

FUKUHARA: And did you use it on Donald Cowan at any time? (51, line 5)

BELCHER: I tried to. (51, line 6)

FUKUHARA: Did you actually hit him? (51, line 7)

BELCHER: I sure made an attempt at him. I threw it at him and the stick broke. I had picked up one of the broken halves and what happened was he was running away from me----(51, lines 8-10)

FUKUHARA: The question was whether you hit him. Did the stick break on Donald Cowan? (51, lines 11-12)

BELCHER: It didn't break on him. It broke on the street. I threw it at him. It broke on the street. I picked up a broken end of it. I did intend to him with it. (51, lines 13-15)

FUKUHARA: She didn't go with them? (41, line 1)

ELLISON: That's correct, she didn't go with them.

The ambulance attendants had----Defendant Cowan went inside. (41, lines 2-3)

FUKUHARA: Why was that? (41, line 4)

ELLISON: Pardon me? (41, line 5)

FUKUHARA: You know why he was there? (41, line 6)

ELLISON: He had fallen down during the chase at least twice, and had a bloody elbow. (41, lines 7-8)

FUKUHARA: You stated a neighbor was chasing the Defendant? (45, lines 13-14)

ELLISON: That's correct, and me.

FUKUHARA: You saw a neighbor chasing him with a golf club? You saw him chasing him with any weapon in his hand like a club? (45, lines 16-18)

ELLISON: No, there was a long stick, approximately three feet long. (45, lines 19-20)

VI. ANALYSIS OF QUOTES FROM TRANSCRIPT CONTAINED IN SECTION V HEREIN:

We can see from both Ellison's statements and Belcher's statements that Defendant did not attempt to hit Spoone or anyone else a second time, but that Defendant "took off running." It is here proven that Spoone's safety was completely ensured by this running away from her and from Ellison and from Belcher.

It is proven that Belcher did attempt to strike Defendant with a three-foot long "walking cane", and that in evading Belcher and Ellison Defendant "fell down" and injured himself in a way which required on-scene ambulance treatment.

(It is also shown in Defendant's medical record from Queen's Emergency Center that Defendant had suffered a deep gash in his arm requiring being sewn shut by sutures, and a broken right forearm which required a cast being applied.) It is proven that Belcher's intent was to hit Defendant with the cane and that he made not merely one attempt, but several.

It is proven that Ellison was also chasing Defendant along with Belcher, thus joining in with Belcher's assault in the second degree.

Belcher's use of force was not legally justified, as Spoone's and Ellison's safety was already assured with Defendant's running away and Spoone's walking around to the front of Belcher's van. Belcher's use of force was strictly punitive--a crime. The result of Belcher's use of the club was that Defendant was injured--though in a manner different from that which Belcher contemplated. But Belcher is still criminally liable for Defendant's falling down and injuring himself while evading Belcher swinging and throwing the club. Ellison is an accomplice to Belcher and aided him. Spoone solicited the violence by her actions.

* * *

This Defendant thus had the right to equal protection of the laws against assault and battery, harassment and terroristic threatening, as well as unlawful arrest and unlawful imprisonment.

There is no question in the testimony quoted in this

memorandum that Jeanette Spoone and Isaac William Ellison chased Defendant off his motorscooter, and that Defendant ran from them. They initiated the violence.

There is no theory of law, given the said testimony of Spoone and Ellison, which would give those two the right to assault Defendant. That their actions were criminal is thus unquestionable.

That the justification laws afford Robert Belcher no right to chase after this Defendant with a club when the Defendant is running away from him and the others is likewise unquestionable. Belcher's actions were thus criminal.

The crimes admitted by Belcher, Ellison and Spoone were mainly felonies. Because Spoone obviously gave her consent to a fight or a scuffle, and because of the language of the statute of Assault in the Third Degree, the highest grade of offense he could possibly be convicted of is a petty misdemeanor. However this is not an admission of committing a petty misdemeanor--this Defendant had the law-given right, the privilege, of using force to prevent his motorscooter from being subjected to criminal mischief.

* * *

...it is clear that there is no legally justifiable standard for prosecuting only this Defendant and allowing Belcher, Ellison and Spoone to not be prosecuted for their acts of violence. That is clear, unequal protection of the laws, forbidden by the U.S. Constitution, by the Hawaii State

Constitution...

* * *

DATED: Honolulu, Hawaii, December 23, 1981.

DONALD D. COWAN
DEFENDANT PRO SE

APPENDIX B

DONALD D. COWAN
250 S. Hotel Street
Honolulu, Hawaii 96813
Tel. No. 524-5600

PLAINTIFF PRO SE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DONALD D. COWAN, Plaintiff, vs. STATE OF HAWAII, CITY AND COUNTY OF HONOLULU, HAROLD Y. SHINTAKU, SANDRA ALEXANDER, KEN T. KUNIYUKI, ARNOLD B. GOLDEN, LAWRENCE A. GOYA, Defendant.	CIVIL NO. 71638 AFFIDAVIT OF DONALD D. COWAN; EXHIBITS "1" THROUGH "34"

AFFIDAVIT OF DONALD D. COWAN

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

DONALD D. COWAN, being first duly sworn on oath, deposes and says:

1. That your Affiant is the Plaintiff in the above-captioned case.

2. That your Affiant, after finishing six months of imprisonment on June 5, 1980, on or about July, 1980, telephoned Court Reporter Kawiika Maano and asked him if he could purchase copies of the transcripts of the February 5, 1980 Civil No. 57584 proceedings from him, and Court Reporter Kawiika Maano replied,

to the best of your Affiant's recollection, "No. I don't think Judge Shintaku wants you to pursue this matter." Your Affiant at the time was without legal knowledge to know how to get around Mr. Maano's refusal to sell the transcripts, and so did not pursue the matter further.

3. That your Affiant is presently without funds sufficient to pay for the transcripts of the Civil No. 57584 proceedings, and therefore relies herein only on the Civil Trial Calendar minutes and records of Civil No. 57584 for exhibits.

* * *

23. ... when your Affiant parked on the street, on March 28, 1979, Spoone exited her home with the new boyfriend, heaved a rock at your Affiant, and the 6'6" or so boyfriend took after your AFfiant, chasing him down the street. Your Affiant did not attempt to fight, but ran to avoid all contact. When the new boyfriend could not catch your Affiant, Spoone called the boyfriend back to your Affiant's Vespa motorscooter, and hollered out so as your Affiant could plainly hear, "Let's push it [your Affiant's Vespa motorscooter] into the ditch." Your Affiant realized that the scenario was to threaten his vehicle so as to cause your Affiant to come back to the proximity of the 6'6" boyfriend, compensating for his inability to catch your Affiant in a footrace, so that the 6'6" boyfriend could grab your Affiant and beat him up.

24. Your Affiant then watched Spoone push over his vehicle, but he refused to come near Spoone, Ellison and his

Vespa for the threat of that relatively minor damage. Then the boyfriend righted the Vespa and began pushing it down the road, towards the very deep, concrete-bottomed ditch, thus threatening the Vespa with probable irrepairable "total" damage. your Affiant began to panic, called out several times to them that he could not let them do this, and finally made the decision to strike the 6'6" boyfriend. When he approached, however, the boyfriend let go of the Vespa and renewed chasing your Affiant, making contact with your Affiant and nearly catching him. the boyfriend tried baiting and catching your Affiant twice this way, and then the third time ignored your Affiant's approach towards him and he and Spoone began pushing the Vespa further down the road, very rapidly, toward the concrete-bottomed ditch, in what seemed to your Affiant to be a decision by the boyfriend and Spoone to forget trying to catch your Affiant and simply shove the Vespa motorscooter into the concrete-bottomed ditch.

25. Your Affiant at this time made the decision that he would have to strike the 6'6" boyfriend very hard in the face, from the side across the width of the Vespa, but when he approached the Vespa he realized his arm-reach was not long enough to reach across the Vespa's front mirrors to strike the boyfriend. When your Affiant realized he could not reach far enough to strike the boyfriend hard enough to stop him, and not wanting to risk going around to the other side and engaging him in a wrestling match since boyfriend outweighed your Affiant by probably 100 pounds, your Affiant made the panicky decision to

strike Spoone instead, in order to stop the rapid pushing of his Vespa towards that concrete-bottomed ditch.

26. Your Affiant attempted to punch Spoone lightly in the forehead (she was bent forward at the waist pushing the Vespa), in his panic not thinking of merely slapping her in the face, but she moved her head and the fairly soft punch landed on the corner of her forehead, and she received a black eye. Your Affiant is told that she also suffered a slight fracture, but your Affiant has never seen any medical report evidence as to the truth of this. In any case, your Affiant backed about 15 or 20 feet away from the boyfriend and Spoone, and Spoone, who in no case was knocked even so much as off balance, was holding her forehead. Her boyfriend asked her, "Are you all right," and Jeanette Spoone replied, "Yes. Get him." The boyfriend and a neighbor then began chasing your Affiant around the street, and the neighbor, who was chasing your Affiant with a walking cane, struck your Affiant with the cane and badly wounded his right forearm just below the elbow, and fractured the right forearm. Soon after a passerby stopped, and prevented further pursuit of your Affiant and then called the police.

27. Spoone told police that she and her boyfriend had gone out merely to talk to your Affiant, and that your Affiant had suddenly, "out of nowhere," struck Spoone; this version told to police has subsequently been shown to have been perjury by her own inconsistent statements made under oath.

28. An ambulance was called for your Affiant, and your

Affiant's arm wound was closed, and your Affiant taken by a friend to Queen's Emergency for sutures to be applied, and a cast put on his arm.

29. Because your Affiant could not drive his Vespa, he and a friend of his parked the Vespa about two blocks away, on a side street, from where the incident occurred, and the friend then drove your Affiant to Queen's Emergency. The next day, your Affiant went to find the Vespa, and it was nowhere to be seen--except that pieces of plastic and cushion foam from the Vespa seat and a few bits of broken plastic were found in the spot where it had been parked. A couple of days later, the police called your Affiant and informed him that the Vespa had been pulled out of Koko Marina Bay by a towtruck, where the Vespa had been sitting underwater in the saltwater bay a couple of days. The Vespa was utterly destroyed beyond any practical cost of repair, an estimate being given that repair would cost far more than a new Vespa. Your Affiant, without any means to buy a new Vespa, and only with minimum no-fault insurance, was required to spend about three months tearing down the Vespa, sanding it inside and out and repainting it, tearing apart the engine and electronics and suspension system, and rebuilding it with new, non-corroded parts.

30. An attorney friend of a friend of Spoone's filed a complaint for an injunction against your Affiant on the alleged ground that he had assaulted Spoone without provocation when she had merely gone out to speak to your Affiant. Your Affiant,

without counsel, attempted to defend himself, and typed an answer to the Complaint as required on the Summons. A hearing for the injunction was held by Judge Arthur Fong. At the hearing, Spoone told essentially the same story that she had told to police, i.e., that she went to talk with your Affiant, and that your Affiant had suddenly struck her. Your Affiant then told the same story that is related in this affidavit. Judge Fong then said, "There are two different stories here," and he set a hearing date for a permanent injunction.

31. Your Affiant, while preparing for the hearing, was suffering from a fractured arm in a cast, severe depression, and was faced with the immediate problem of fixing his only transportation immediately before too much corrosion set in, or lose it forever. Your Affiant was without transportation to go and seek legal help, and was suffering a great amount of pain, and therefore he called attorney Roney and agreed to sign an injunction without a hearing.

32. Attorney Roney then drafted the injunction and your Affiant went to his office. Your Affiant was surprised that there was a "findings of fact" involved, as his impression was he was simply going to agree to sign an "agreement" or "contract" without a hearing. He objected upon reading the Findings of Fact to Roney that the Findings of Fact were false in very large part and he expressed reluctance to sign. Roney then reminded your Affiant, "You remember what Judge Font was like. I talked to him and said he might not let you stipulate." Your Affiant,

remembering Judge Fong's harsh demeanor, and fearing that Roney meant Judge Fong might impose some unstated severe penalty upon your Affiant, signed the stipulation.

* * *

34. Subsequently, on July 23, 1979, your Affiant was summoned as a defendant in Civil no. 57584 to Judge Shintaku's court to show why he should not be held in contempt of the injunction; your Affiant could not afford counsel and was forced to appear by himself without counsel to assist him.

35. Your Affiant did not realize that the hearing on that motion was going to be a trial. Nevertheless, he was frightened and sought counsel from the Public Defenders Office, from Legal Aid Society and from two private attorneys between July 24, 1979 and July 27, 1979, i.e., between service upon him and trial, and was unsuccessful in securing counsel for lack of funds with the two private counsel, and for official reasons from the Public Defenders Office and Legal Aid Society.

36. That your Affiant appeared as ordered on July 27, 1979 in SHINTAKU's court room, with no attorney present to advise or assist him.

37. That your Affiant was asked by SHINTAKU if he was representing himself. your Affiant responded, to the best of his recollection, by informing SHINTAKU about his unsuccessful attempts to obtain counsel from the Public Defenders Office and from Legal Aid Society and from the private attorneys. your Affiant specifically remembers saying, to the best of his

recollection, "Your Honor, I am appearing very reluctantly as Defendant Pro Se ... I don't know what I'm doing"; and your Affiant recalls SHINTAKU responding, "I'll help you along."

* * *

39. SHINTAKU at no time informed your Affiant that he had the right to appointment of legal counsel; SHINTAKU at no time examined your Affiant as to his indigency status.

40. SHINTAKU at no time informed COWAN of his right to remain silent.

41. Your Affiant, on July 27, 1979 did not know where to find and read the offense of which he was accused, "§710-1077(1)(g)", and had not read that statute before appearing in SHINTAKU's court room on July 27, 1979.

42. Your Affiant does not recall for a certainty if SHINTAKU asked him if he wanted trial by jury or not on July 27, 1979, but believes SHINTAKU did not inquire of your Affiant if he wanted a jury trial. However, your Affiant knows for a certainty that on July 27, 1979 he had no idea that by law a jury trial could result in up to one year imprisonment, but that trial by judge without a jury for contempt limited punishment to only 30 days or less for contempt.

43. At no time in the proceeding, prior to verdict and sentence, was your Affiant informed that he faced a term of imprisonment at the conclusion of the proceedings.

* * *

47. On July 27, 1979 your Affiant was completely

unaware of the existence of the Hawaii Rules of Evidence, and had no experience whatsoever in cross-examining a witness. Your Affiant did not know any basis' for objecting to testimony during a trial, believing at the time that this was a judge's job.

48. At the close of proceedings on July 23, 1979, SHINTAKU announced, to the best of your Affiant's recollection, "I find the defendant guilty by a preponderance of the evidence:" Your Affiant specifically remembers the SHINTAKU [sic: judge] issuing the phrase, "by a preponderance of the evidence" in regard to the method of arriving at the verdict.

49. SHINTAKU then announced that your Affiant was sentenced to six months in jail, and then added the sentence would be suspended for thirteen months.

50. At the close of the July 20, 1979 proceeding, SHINTAKU did not tell your Affiant that he had the right to appeal the conviction and sentence. Your Affiant was not told by SHINTAKU that he had the right to appointment of counsel for purpose of filing an appeal. Your Affiant was not told that he should file a notice of appeal, and was not told that he had the right to have the court clerk compose and file a notice of appeal for him. The hearing/trial was simply adjourned, and your Affiant allowed to go home.

51. In any case, your Affiant, totally ignorant of his legal trial rights, and totally ignorant of what a proper trial was supposed to be like, and believing that judges could be counted on to be 100% honest in conducting a trial, simply did

not realize that there was anything wrong at his trial, though he was dismayed at being convicted.

52. Sometime in late November to early December 1979, your Affiant was notified by his church secretary that a prosecutor named "Alexander" had called the church making inquiries about him. The church secretary seemed very upset at your Affiant regarding the prosecutor's inquiries, and so your Affiant called the prosecuting attorneys office to find out what was wrong and asked to speak to "Alexander".

53. Deputy Prosecutor Sandra Alexander took the call, and your Affiant asked if he could give her any information. In the course of the conversation, after finding out that the inquiries were in regard to a complaint by the Plaintiff of Civil No. 57584, Jeanette Spoone, your Affiant asked Alexander if she could help arrange a "mediation" proceeding between Spoone and himself. Deputy Prosecutor Alexander replied that she "would see."

54. Your Affiant called Alexander a day or so later, and Alexander told your Affiant to come to the Prosecuting Attorneys Office and speak with someone there who would perform the investigation into possible mediation. Your Affiant does not recall the name of the male attorney to whom he was referred, but believes that the name of the Department within the 1164 Bishop Street office [prosecutors office] was "Victim Kokua" [Hawaiian for help or assistance].

* * *

56. Your Affiant left the prosecuting attorneys office feeling hopeful that a mediation process would be started through the Prosecuting Attorneys office. However, he waited several days before calling ALEXANDER, to intentionally avoid appearing pushy and impolite. When he did call ALEXANDER, she spoke right off to your Affiant in an extremely hostile tone of voice for no given reason. Your Affiant was surprised and bewildered by ALEXANDER's attacking him and listened quietly. After apparently running out of energy, ALEXANDER stated over the phone, "I'm going to teach you a lesson about how society operates." Your Affiant had by this time begun to be annoyed by ALEXANDER's unreasonable tone of voice, and immediately upon the challenge issued by ALEXANDER, of teaching him a lesson about how society operates, he replied, "And I'm going to teach you a big lesson about people," and both she and your Affiant hung up. Your Affiant did not attempt to contact Alexander again prior to December 23, 1979.

57. Your Affiant was served a few days later, in early December, 1979, with a motion in Civil No. 57584 to impose sanctions against him, filed by attorney Kuniyuki.

* * *

58. On December 23, 1979, the hearing commenced, and your Affiant was not represented by legal counsel. To his surprise, prosecutor ALEXANDER was there. Kuniyuki called her as his very first witness. ALEXANDER testified in that Civil No. 57584 hearing, to SHINTAKU, that your Affiant had "threatened"

her by saying he was going to teach her "a big lesson." Your Affiant then asked SHINTAKU if he could cross-examine her. Alexander's voice was extremely hostile, and your Affiant was flustered by her unvarying hostile tone of voice. Your Affiant tried to clarify the telephone conversation and asked her what she had said immediately prior to your Affiant's saying he was going to teach her "a big lesson about people," and ALEXANDER replied, to the best of your Affiant's recollection, "I don't remember." Somehow, in the course of the cross-examination, ALEXANDER managed to state that she knew your Affiant's friends, had been invited to a party at his friends' house, and she knew that your Affiant's friends were "hardly friends." Your Affiant gave up on cross-examining ALEXANDER, and asked SHINTAKU if he could take the stand and explain what had transpired in the telephone conversation in question, and in general with regard to your Affiant's attempt to effect a "mediation" process with the help of ALEXANDER. ...

59. Your Affiant took the stand and explained the course of events surrounding the telephone conversation in question, explaining it pretty much exactly as described in this Affidavit. At the finish of his explanation your Affiant left the stand. SHINTAKU then said, "I've heard enough." And without calling any other witness than ALEXANDER, without receiving any other evidence at the hearing, he sentenced your Affiant to begin spending weekends in jail, and then added that your Affiant was to be examined psychiatrically to determine his mental

capabilities. ...

60. Your Affiant felt extremely frustrated and helpless. Regarding the prospect of going to jail every Friday night and spending the weekend at Halawa [jail], your Affiant thought that a six-months' previously assessed sentence, worked off at the rate of two days per weekend, would resulting imprisonment on weekends for a very long time. Your Affiant believed that the best way to serve his already assessed sentence would therefore be to serve it in a single, uninterrupted block of time, so that he would risk losing his job through defamation only once, rather than once a week.

61. Your Affiant did not at the time, on December 11, 1979, realize that the proceedings were utterly unlawful, and was simply dismayed. Your Affiant had no knowledge of any defense available to him.

62. ... Your Affiant did not know the existence of H.R.S. [Hawaii Revised Statutes] §706-627 mandating representation by counsel at a suspension-revocation hearing, and other rights.

* * *

64. Your Affiant then, feeling completely frustrated and helpless, asked the Court to assess the maximum period of imprisonment, meaning, the full six months already assessed. Your Affiant did not want to go to jail--but facing the beginning of spending time in jail, your Affiant chose a solid block of six months imprisonment over spending weekends in jail adding up to a

total of six months--i.e., weekends in jail for nearly two years. Your Affiant's sole purpose in this was to get the imprisonment over with in one sitting, rather than on repeated weekends. SHINTAKU answered, "If you ask that I cannot refuse."

* * *

68. At no time was your Defendant shown a copy of the December 11, 1979 Mittimus, and no copy was mailed to him at prison, even though your Affiant was an unrepresented "defendant pro se." Your Affiant was entirely unaware of even the existence of the Mittimus, which said your Affiant was convicted of "civil" contempt of court, until after he completed his jail sentence on June 5, 1980, six months later, and SHINTAKU's secretary showed your Affiant the civil record file kept by SHINTAKU in his office--likewise, that is the first opportunity your Affiant saw several other documents referred to in this affidavit, including the contents of what happened at the February 5, 1980 hearing.

* * *

70. On December 21, 1979, your Affiant was surprised by SHINTAKU visiting Keehi Annex [jail], without the slightest notice to your Affiant, to interview him. Your Affiant was again not represented or advised by legal counsel at this Keehi Annex interview. SHINTAKU at this interview did not inform your Affiant of any of his rights, such as the right to have appointed legal counsel advise him, but simply offered, to the best of your Affiant's recollection, to release your Affiant on the condition that your Affiant not try to contact Jeanette Spoone. Your

Affiant felt that if he accepted such an offer nothing would change in the legal liability hanging over his head, fearing that similar proceedings would simply occur again.

* * *

71. SHINTAKU next asked that your Affiant be psychiatrically examined, though your Affiant has never yet seen the order to Dr. Arnold Golden, and no order appears in the record specifically ordering Dr. Arnold GOLDEN to psychiatrically examine your Affiant or indicating the scope of the examination. GOLDEN thus examined your Affiant at Keehi Annex and wrote a four-page letter report to SHINTAKU dated January 8, 1980, the contents being withheld from your Affiant until March 25, 1980, too late for your Affiant to contest the findings before it did severe damage to him [on March 25, 1980] in Cr. No. 55545...

* * *

73. Though the four-page report was written on January 8, 1979, GOLDEN refused your Affiant's repeated requests to see his psychiatric report, repeatedly saying, "I'll try to get you a copy," but never giving one to your Affiant. Your Affiant, an unrepresented layman, was not allowed to see a copy of the report until two and a half months later, five minutes before a "fitness hearing" held on March 25, 1980 for an assault-third charge pressed against him by ALEXANDER regarding his single instance of using defensive force on March 28, 1979. . .

* * *

74. Within about three days of GOLDEN's examination of

your Affiant, on or about January 11, 1980, your Affiant met a prisoner who is owner of the "Hot Dog Express" [a wheeled hot dog stand], which some time ago was constantly being cited for contempt of court. Your Affiant struck up a conversation with that owner and told him about being in jail for six months, and that he had no attorney. The owner told your Affiant that he definitely had the right to legal counsel and specifically cited HRS §802-1 to your Affiant. When your Affiant expressed disbelief, because SHINTAKU had indicated he had no right to counsel by his actions in the courtroom, and by the fact of his imprisonment, the owner told your Affiant that a set of Hawaii Revised Statutes was in the Keehi Annex kitchen, and that your Affiant could get permission to see them if he requested. ... Your Affiant then obtained permission to see the statutes and wrote the attached letter to SHINTAKU ... [Appendix K, p.54, herein], on or about January 12, 1980...

* * *

79. Your Affiant, sometime between January 14, 1980, the date of Shintaku's letter to your Affiant's mother [Appendix J, p.53], and January 21, 1980, the date ALEXANDER pressed a charge of Assault Third against your Affiant, your Affiant visited GOLDEN in his Halawa Office. Your Affiant told GOLDEN that he would like to accept SHINTAKU's offer to release him from jail, and on your Affiant's own, he offered with no prompting whatsoever to see a psychologist upon getting out of jail, to help him get over his anger at all that had happened. Your

Affiant would truly liked to have done this. GOLDEN replied that he would talk to SHINTAKU about it, but said, "I think some teeth should be put in it." Your Affiant specifically remembers this remark by GOLDEN in connection to his release form jail. A few days later, on or about January 21, 1980, your Affiant was served at Halawa jail with a charge for Assault and Battery in the Third Degree--the "teeth" had apparently arrived. ...

80. Your Affiant recognized immediately the attempt to control him by the threat of the Assault Third charge [for a description of the incident charged, see Appendix "A", p.1 herein which are statements made under oath by Ms. Spoone and her two "witnesses"; also see paragraphs 23 through 29 in this Appendix "B", p.17], and was very angry at the threat by a charge for an assault incident in which he himself had been the victim, had his arm broken, and had his $1,500.00 Vespa motorscooter soon after destroyed. So when guards, on January 28, 1980, took him from the medical module and drove him to SHINTAKU's court chambers for a hearing, he was not very pleased--he was really angry at the false charge.

81. At the January 28, 1980 civil hearing were prosecutor ALEXANDER, GOLDEN, Kuniyuki, a law clerk of SHINTAKU's, an attorney Pang who was merely there to assist Kuniyuki who couldn't help being late for ten minutes, SHINTAKU and your Affiant. Your Affiant was not represented by counsel. The hearing opened with SHINTAKU addressing ... your Affiant's letter [see Appendix K, p.54 herein] request to appoint counsel

for your Affiant and grant a new trial. SHINTAKU denied the request, saying that the case was a "civil matter" and that therefore your Affiant was not entitled to counsel. ...

82. Then ALEXANDER spoke to your Affiant about the assault third charge she had pressed against your Affiant a few days earlier [on January 21, 1980]. ALEXANDER and SHINTAKU both told your Affiant that he probably would not have to worry about the assault third charge if he voluntarily went to see a psychiatrist. ALEXANDER in this regard strongly hinted the threat would be held over your Affiant's head for about six months, the life of a penal summons. ...

83. Your Affiant then was released from imprisonment...

84. Your Affiant was severely depressed about the Assault Third charge. He did not feel "free" because of the false assault third charge threatening him, and he did not want to see a psychologist under the threat by a false charge. After several days of thinking about it, your Affiant, on February 1, 1980, made the decision to go back to SHINTAKU's courtroom and request that SHINTAKU either send him back to jail or remove the threats against him of imprisonment--your Affiant deciding to refuse to see a psychologist under court threat or malicious prosecution for a false assault charge. SHINTAKU said to your Affiant, "I'm not going to send you back to jail. I don't know what to do with you, but jail is not the place for you." Your Affiant asked if he was free to leave, and SHINTAKU indicated

your Affiant was free to leave. Your Affiant was overjoyed, and went back to his church, called Western Temporary Services, was told he could begin working again, and your Affiant did begin working, his first assignment being at attorney John Chanin's office on a mag car II typewriter.

85. But early on the morning of February 5, 1980, before it was time to get up and go to work, your Affiant was awakened by his pastor, and told to get dressed to go to Court with him. When your Affiant questioned the pastor (Olson), he was given no information why he was to go to court--not even that a hearing was to occur. Your Affiant was not told even to pack up his belongings.

86. When your Affiant arrived in Court, he was dismayed to see GOLDEN there, deputy prosecuting attorney ALEXANDER, attorney Kuniyuki, attorney Roney, and many other people he had never seen before. While taking his seat, ALEXANDER approached him and said, "Trying to make headlines, eh?", but gave no other remarks so as to explain herself. She appeared energetically belligerent towards your Affiant.

87. Your Affiant sat down in the court room. Five minutes later SHINTAKU entered the courtroom. Upon seating himself, SHINTAKU directed someone, probably his bailiff or clerk, to lead your very quiet and puzzled Affiant out of the court room and into his Chambers. The bailiff did so, and closed the door to SHINTAKU's office upon your Affiant so that he could not hear what was being said about him in the court room. Your

Affiant was not represented by any counsel in that court room whatsoever. ... [see Petitioners' Appendix, page 213a, 10:40 a.m. entry]

88. About a half hour passed (27 minutes by court calendar minutes) with your Affiant not having a hint at what was occurring and being said in the courtroom [but see Petitioners' Appendix, page 213a-214a, entries 10:40 am through 11:07 am].

89. About a half hour later the bailiff opened the door, and led your Affiant out of the room and back into SHINTAKU's courtroom. [See Petitioners' Appendix, page 214a, 11:07 a.m. entry.] When your Affiant walked into the court room every one was very quiet and looking at your Affiant. Your Affiant seated himself, and SHINTAKU then said something about a threatening telephone call. When your Affiant, startled by SHINTAKU's statement, spoke up to ask SHINTAKU clarify his remark, SHINTAKU refused to further inform [ignored] your Affiant. Then SHINTAKU stated he had decided to send your Affiant back to jail because he had violated the release condition of seeing a psychiatrist. Your Affiant was stunned, and against queried SHINTAKU about the threatening phone call. SHINTAKU would say nothing in answer, ignoring your Affiant's request for information. He said something to your Affiant about "initiation of involuntary commitment proceedings." [Affiant at the time was stunned, busy forming questions in his mind. Thus his recollection is not exact. However, Respondent herein has now obtained a verbatim transcript of every word uttered at this

proceeding, both while he was kept out of the hearing room and after he was allowed back in--too late, however, as inclusion as part of the record on appeal. Thus, unless asked to submit the transcript as part of the record on appeal, the minutes as set forth in Petitioners' Appendix, pages 213a through 214a, are the best evidence permitted to be filed in this appeal] ... When your Affiant asked SHINTAKU if he could go home for an hour to pack up his belongings for storage and to pick up some small things like a toothbrush and a couple of books and a change to old clothes, SHINTAKU refused permission, and your Affiant was very shortly after transported back to the Halawa High Security Facility ward for the criminally insane.

90. Your Affiant was not asked by SHINTAKU where he was on any particular day and time, i.e., at the time of the fire testified to at the [February 5, 1980] proceeding. He was given no chance to prove an alibi.

* * *

94. It was not until a month after the February 5, 1980 "suspension-revocation" hearing, on March 7, 1980 that your Affiant was told by GOLDEN, by casual mention, that there had been a fire set at the office of Spoone's former attorney. GOLDEN casually mentioned the fire to your Affiant while leaving the medical ward on March 7, 1980, and when your Affiant was dumbstruck and queried GOLDEN. GOLDEN said merely that there had been a fire set at "John Roney's office" during the week your Affiant was released from imprisonment. Your Affiant found out

nothing more until his release from imprisonment four months later in June, 1980...

* * *

96. Your Affiant was informed on March 7, 1980, as indicated above, by GOLDEN about a fire in the case, and your Affiant immediately wrote to SHINTAKU, Roney and ALEXANDER offering to take a polygraph test about the fire. SHINTAKU and the others did not ever reply, and your Affiant remained imprisoned and defenseless...

97. Your Affiant does not have any records to indicate when Public Defender GOYA became involved in his case [District Court, and not Circuit judge Shintaku, had appointed the public defenders office to represent Respondent in the assault-third case only--and not at all for the civil imprisonment case conducted by petitioner SHINTAKU], and so can give no dates for first contact. However, GOYA sometime in March 1980 did visit your Affiant at Halawa and talked about the Assault Third case. In the course of that interview, your Affiant naturally asked GOYA what "civil" contempt was, whether his six months' sentence was lawful, whether he had the right to an attorney in the civil case, and if GOYA would help your Affiant obtain a Writ of Habeas Corpus release from the unlawful civil contempt imprisonment. GOYA said he would check on the civil contempt imprisonment. However, GOYA did not ever respond at anytime during the rest of your Affiant's imprisonment to your Affiant's queries and request to him for obtaining a Writ of Habeas Corpus release from

imprisonment. GOYA utterly begged the question. During Affiant's continued imprisonment at Halawa [High Security Facility], guards refused your Affiant's requests to see HRS [Hawaii Revised Statutes] law books, saying they were too understaffed to allow them to let prisoners into the library where the lawbooks were. Your Affiant made several requests, all of which were denied by guards.

* * *

104. ... your Affiant had his first hearing in District Court for a "fitness hearing" on March 25, 1980. At that hearing, [District Court] Judge Salz [presiding over the assault-third case] made no inquiry of your Affiant whatsoever before pronouncing he was going to order a three-member psychiatric panel examination of your Affiant. [see Appendix O, p.60 herein] Judge Salz announced his mind was made up entirely by reading GOLDEN's psychiatric report [somehow provided to District Court from petitioner Shintaku's court, while Respondent himself was denied the right to see the report] and talking with GOYA privately about your Affiant's case before the hearing. At no time prior to this hearing was your Affiant ever so much as seen by Judge Salz, let alone interrogated as to your Affiant's ability to understand the proceedings against him and participate in his defense.

105. If a reader looks at the attached March 25, 1980 transcript [see Appendix K, p.60 herein] and wonders what the devil your Affiant was trying to say at the hearing, the cause

was primarily because your Affiant had been led to believe that a trial was going to take place, and had been given the first opportunity to read GOLDEN's psychiatric report five minutes before getting up in front of Judge Salz, and had just finished reading GOLDEN's report before standing up in front of [Judge] Salz. Your Affiant was dumbstruck at the accusations by GOLDEN of schizophrenia and delusions. GOLDEN had obviously been briefed in his examination entirely by the adverse [civil] parties to your Affiant in Civil No., 57584, and had made conclusions based upon [one-sided] prejudices formed, whereas your Affiant had no attorney working for him to present evidence of his generally peaceful, pleasant manner, such as might be had from his employers and other associates. Generally, your Affiant was near speechless at Judge Salz' likewise prejudice and rather [extremely] assumptive, assertive speaking to your Affiant [at the March 25, 1980 hearing]. It is clear, however, that your Affiant was trying to obtain information about whether he had the right to not cooperate with the examination [i.e., not accept an insanity defense when he believed he was assaulted and struck back once only when his property was threatened with severe damage] and what would be the consequences [of trying to avoid an insanity plea and proceed on the merits of the assault-third case].

106. As can be seen in the March 25, 1980 transcript, Judge Salz indicated rather strongly, unequivocally, that if your Affiant did not cooperate, "you will simply wind up continuously

in custody on this kind of matter." [see Appendix K, p.60 herein]. Your Affiant remembered [these words of Judge Salz] back in his cell block after the March 25, 1980 "fitness" hearing, and his words had a profound effect on enlarging the sense of legal helplessness your Affiant experienced. The general duress in the second floor cellblock, coupled with GOYA's betrayal of him, coupled with Judge Salz' dire warnings of "continuous custody" if your Affiant refused to cooperate with the psychiatric examinations, finally culminated in your Affiant briefly giving in and writing to SHINTAKU that he was now willing to be transferred to Kaneohe [mental hospital] if he liked, and would even waive a hearing. Your Affiant was terrified, and feeling utterly helpless. He had given up all hope of legal help in the civil imprisonment, and now just wanted to end the ordeal in Oahu COmmunity Correctional Center.

107. But your Affiant's giving up lasted one night, and immediately upon awakening the next morning after sending the letter he wrote another letter asking SHINTAKU to consider the first letter [of the day before] "null and void." ...

* * *

108. ... GOYA, however, placed the Public Defenders name and his own name [even though never appointed by Judge Shintaku] on your Affiant's Civil No. 57584 as your Affiant's civil case attorney, and filed for an amended order of disposition sending your Affiant to Kaneohe State Hospital. And the next day. GOYA filed a motion stating that your Affiant

"hereby gives notice of intention to rely on the defense of mental irresponsibility, and signed an affidavit stating that he believed your Affiant was suffering from a mental disease "which may adversely affect Defendant's capacity to understand the proceedings against him to assist in his own defense," though your Affiant at no time ever told Goya he wanted to use an insanity plea, and flatly forbade Goya to use an insanity plea.

109. Your Affiant was thus completely ignored by SHINTAKU and GOYA and transferred to Kaneohe State Hospital [as part of his civil imprisonment] "to determine your Affiant's mental capabilities." At Kaneohe State Hospital, your Affiant was stripped and put into white pajamas typical of insane asylums. He was then immediately interviewed by the on-duty psychiatrist, who very shortly after beginning his interview stated that he couldn't believe GOLDEN had recommended your Affiant be sent to Kaneohe [Mental] Hospital, that your Affiant was obviously sane. He indicated negative feelings about GOLDEN's capabilities as a psychiatrist...

* * *

111. Your Affiant had no problems at Kaneohe [State mental hospital].

112. While in white insane asylum pajamas your Affiant was interviewed by Dr. Ko as the first of the three-member panel examination, and the interview occurred while your Affiant was still in solitary confinement [every person coming into the facility is placed, as standard operating procedure, in an all-

white solitary confinement room with no windows for about five days, and observed], and occurred with your Affiant being led directly out of the bare white solitary confinement room to meet Dr. Ko and be examined. Dr. Ko noted "depressed and paranoid" features of your Affiant, but said he obviously did not agree with GOLDEN's assessments of delusions and schizophrenia. He expressed that "I am concerned that Mr. Cowan may be on the verge of a major emotional breakdown that could very well develop into a blatant psychotic state." Upon completion of the interview, your Affiant was led back into the all white solitary confinement room in white pajamas.

113. A day or so later your Affiant was interviewed by Dr. Nancy Knight. Your Affiant was out of solitary confinement now. In addition to having some favorable opinions of your Affiant, Dr. Knight stated, "It should be noted that the equally obsessive behavior of the complaining Witness [Jeanette Spoone] was an indispensable ingredient in the escalation of this conflict."

114. Your Affiant was next interviewed by Dr. Theodore Goldman [not to be confused with petitioner GOLDEN]. However, shortly before the interview, your Affiant had placed his clothing in the Kaneohe State Hospital laundry, and that laundry [facility] was notorious for losing clothing, probably stolen by those [patients] who washed it. Your Affiant never got his [own] clothing back, and thus he was interviewed by Dr. Goldman in white, baggy asylum pajamas. For some reason, Dr. Goldman came

back a couple of days later for a second interview of your Affiant. Your Affiant by that time had been given new "clothing," an oversized colored T-shirt and baggy, ripped-down-the-middle white trousers. Dr. Goldman remarked that "You look better today," in apparent reference to the improvement in the clothing your Affiant was wearing.

115. The examinations being completed, your Affiant remained at Kaneohe State [Mental] Hospital a few more days. One of the doctors in charge questioned your Affiant closely about his case. When your Affiant stated that he wanted to discharge GOYA and the Public Defenders Office [from Respondent's District Court assault-third case], that doctor stated your Affiant had better not, because he would be tempted then to state your Affiant was insane for doing so. Your Affiant did not perceive any intended sense of kidding or humor in that statement.

116. Your Affiant then was taken back to Halawa High Security Facility and placed in the criminally insane unit again [for the remainder of his civil imprisonment term, release date being June 5, 1980]... * * *

151. FURTHER Affiant SAYETH NAUGHT.

DATED: Honolulu, Hawaii, February 24, 1983.

DONALD D. COWAN
Plaintiff Pro Se

Subscribed and sworn to before me
this 24th day of February, 1983.

Valerie Schweigert
Notary Public, First Judicial
Circuit, State of Hawaii
My Commission Expires: 3/4/85

APPENDIX C

Hawaii Revised Statutes Section 710-1077, contempt of court.

§710-1077. Criminal contempt of court. (1) A person commits the offense of criminal contempt of court if:

* * *

(g) He intentionally disobeys or resists the process, injunction, or other mandate of a court;

(2) Except as provided in subsections (3) and (7), criminal contempt of court is a misdemeanor.

(3) The court may treat the commission of an offense under subsection (1) as a petty misdemeanor, in which case:

(a) If the offense was committed in the ***immediate view*** and presence of the court, or under such circumstances that the court has knowledge of all of the facts constituting the offense, the court may order summary conviction and disposition; and

(b) If the offense ***was not committed in the immediate view and presence of the court***, nor under such circumstances that the court has knowledge of all of the facts constituting the offense, the court shall order the defendant to appear before it to answer a charge of *criminal* contempt of court; the trial, if any, upon the charge shall be by the court without a jury; and proof of guilty *beyond a reasonable doubt* shall be required for conviction.

(6) Nothing in this section shall be construed to alter the court's power to punish civil contempt. When the contempt consists of the refusal to perform an act which the contemnor has the power to perform, *he may be imprisoned until he has performed it.* In such a case *the act shall be specified in the warrant of commitment.* ***In any proceeding for review of the judgment or commitment, no presumption of law shall be made in support of the jurisdiction to render the judgment or order the commitment.***

APPENDIX D

Hawaii Revised Statutes Statute granting a citizen the privilege of using force to protect his property.

§ 703-306. Use of force for the protection of property. (1) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary:

* * *

(c) To prevent theft, criminal mischief, or any trespassory taking of tangible, movable property in his possession or in the possession of another person for whose protection he acts.

(2) The actor may in the circumstances specified in subsection (1) use such force as he believes is necessary to protect the threatened property, provided that he first requests the person against whom force is used to desist from his interference with the property, unless the actor believes that:

(a) Such a request would be useless; or

(b) It would be dangerous to himself or another person to make the request; or

(c) Substantial harm would be done to the physical condition of the property which is sought to be protected before the request could effectively be made.

* * *

APPENDIX E

Rights of a defendant, and a judge's ministerial duty to inform the defendant of these rights, and provide them, as provided by *Hawaii Revised Statutes*:

Section 802-1 of the *Hawaii Revised Statutes* ("*Hawaii Rev. Stat.*") provides:

> Any indigent person who is (1) arrested for, charged with or convicted of an offense or offenses punishable by confinement in jail or prison ...; or (2) *threatened* by confinement, against the indigent person's will, in any psychiatric or other mental institution or facility; ... shall be entitled to be represented by a public defender. ... the court may appoint other counsel.
> [Emphasis added.]

Section 802-2, *Hawaii Rev. Stat.*, entitled "Notification of right to representation," provides:

> In every criminal case or proceeding in which a person entitled by law to representation by counsel appears without counsel, *the judge shall advise* the person of the person's right to representation by counsel and also that if the person is financially unable to obtain counsel, the court may appoint one at the cost to the State.
> [Emphasis added.]

Section 802-3, *Hawaii Rev. Stat.*, provides:

> Any person entitled to representation by a public defender or other appointed counsel may at any reasonable time request any judge to appoint counsel to represent the person.

Section 802-5, *Hawaii Rev. Stat.*, provides:

> (a) When it shall appear to a judge that a person requesting the appointment of counsel satisfies the requirements of this chapter, the judge shall appoint counsel to represent the person at all stages of the proceedings including appeal...

APPENDIX F

Trial rights as provided by a defendant by *The Constitution of the State of Hawaii*:

Article I, Section 5, of *The Constitution of the State of Hawaii* provides:

> No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof....

Article I, Section 8, of *The Constitution of the State of Hawaii* provides:

> No citizen shall be disfranchised, or deprived of any of the rights or privileges secured to other citizens, unless by the law of the land.

Article I, Section 14, of *The Constitution of the State of Hawaii* provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the district wherein the crime shall have been committed, which district shall have been previously ascertained by law, or of such other district to which the prosecution may be removed with the consent of the accused; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against the accused; to have compulsory process for obtaining witnesses in the accused's favor; and to have the assistance of counsel for the accused's defense. Juries, where the crime charged is serious, shall consist of twelve persons. The State shall provide counsel for an indigent defendant charged with an offense punishable by imprisonment.

APPENDIX G

Limitations against denying a Hawaii citizen his rights are provided by *The Constitution of the State of Hawaii* as follows:

Article I, Section 15, of *The Constitution of the State of Hawaii* provides:

> The privilege of the writ of habeas corpus shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require.
>
> The power of suspending the privilege of the writ of habeas corpus, and the laws or the execution thereof, shall never be exercised except by the legislature, or by authority derived from it to be exercised in such particular cases only as the legislature shall expressly prescribe.

Article I, Section 21, of *The Constitution of the State of Hawaii* provides:

> The power of the State to act in the general welfare shall never be impaired by the making of any irrevocable grant of special privileges or immunities.

Article I, Section 22, of the *Constitution of the State of Hawaii* provides:

> The enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

APPENDIX B

The Supreme Court of the State of Hawaii is empowered to promulgate rules of court, rules of conduct, and to judge judges by *The Constitution of the State of Hawaii* as follows:

Article VI, Section 1, of *The Constitution of the State of Hawaii* provides:

> The judicial power of the State shall be vested in one supreme court, one intermediate appellate court, circuit courts, district courts and in such other courts as the legislature may from time to time establish. The several courts shall have original and appellate jurisdiction as provided by law and shall establish time limits for disposition of cases in accordance with their rules.

Article VI, Section 5, of *The Constitution of the State of Hawaii* provides:

> *The supreme court* shall have the power to reprimand, discipline, suspend with or without salary, retire or remove from office any justice or judge for misconduct or disability, as provided by rules *adopted by the supreme court*.
>
> *The supreme court* shall create a commission on judicial discipline which shall have authority to investigate and conduct hearings concerning allegations of misconduct or disability and to make recommendations to the supreme court concerning reprimand, discipline, suspension, retirement or removal of any justice or judge.
> [Emphasis added.]

Article VI, Section 7, of *The Constitution of the State of Hawaii* provides:

> *The supreme court* shall have power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, procedure and appeals, which shall have the force and effect of law.
> [Emphasis added.]

APPENDIX I

Relevant part of petitioner Golden's psychiatric report filed with petitioner Shintaku's court on January 8, 1980, but denied for Respondent's reading until March 25, 1980:

> This man's mental status is as follows: He is an attractive Caucasian male who physically appears to be from an upper social class. His speech is proper and grammatically correct. Initially, he appears to speak appropriately and reasonably comprehensively. As the conversation goes on however, his speech becomes markedly over specific, over detailed and over precise...
>
> This man's sensorium is clear. Throughout the interview he wanted to demonstrate that he could understand things as others might see them to be;
>
> His affect (or emotional responsivity) is markedly constricted. He is generally suspicious throughout, though he was more or less cooperative.
>
> This man is suspicious about a psychiatrist; he believes that the psychiatrist might relay word of some of the content of the interview...
>
> It should be noted that I took the opportunity to put words in his mouth because he hedged a number of times when I asked questions in this area.
>
> This man's interpretation of the old proverb "When the cat's away the mice will play," is "People want to do what they want to do...if control on it in the form of someone watching...when the cat's around the mice will not do what they want to do...look at it another way...the mice really do want to play...the cat's a drag." This concrete, ideationally diffuse interpretation of the above proverb is typically schizophrenic. It is entirely incompatible with what a middle class, reasonably intelligent, normal young man would say.
>
> Diagnosis approximate schizophrenia,

paranoid type.

At the current time this man is totally refractory to voluntary involvement in psychotherapy. ....I should add that given this man's recalcitrance to psychiatric therapy at this time I am in no position to suggest that he get therapy at the present time as a condition of release or as a method of hopefully resolving the current situation.

In my opinion, this man presents a minimal danger to himself or to other persons at the present time...

He has delusionally blamed another party, to a large extent, for his current situation.

In my opinion, this man was not responsible for his behavior at the time of the alleged offense. In my opinion, this man is quite possibly unfit to stand trial.

APPENDIX J

January 14, 1980

Dear Mrs. Beeten:

Enclosed is a copy of the report submitted to me by Dr. Arnold B. Golden, psychiatric Consultant for the state. I believe the letter is self-explanatory. As to the recommendation contained at the end of page 3 and continued on page 4, this Court has requested the attorney for Mrs. Spoone to contact the prosecutor's office to see if they could proceed with the criminal action against your son. Since the matter before me was a civil matter, I am not empowered to empanel a sanity commission under our laws. such a commission would be empaneled in a case of a criminal action.

I will keep you informed as to further progress in this matter. At this point I do not think that your coming to Hawaii would be of any help to your son; however, the decision would be yours.

Sincerely,

Harold Y. Shintaku
Judge, Seventh Division

APPENDIX X

Letter written on January 12, 1980, postmarked January 21, 1980, requesting appointment of counsel, release on writ of habeas corpus, and a new trial with the assistance of counsel:

Dear Judge Shintaku:

HRS § 802-1 states essentially that any indigent person arrested, charged or convicted of an offense punishable by confinement in jail is entitled to representation by public defender or other appointed counsel. At the time of my trial I was an indigent person (and I still am), and the offense I was charged with and convicted of, HRS 710-1077(g) [sic.], was punishable by 6 months imprisonment. Therefore I was entitled to representation by appointed counsel at that trial. And at the opening of that trial I informed you that "I am appearing very reluctantly as Defendant Pro Se...I do not have enough money to hire an attorney..."

HRS § 802-2 states "In every criminal case or proceeding in which a person entitled by law to representation by counsel appears without counsel, the judge shall advise him of his right to representation by counsel and also that if he is financially unable to obtain counsel, the court may appoint one at the cost to the state." In my trial you neither advised me of that right nor appointed counsel to me or referred me to the Public Defender's office.

The date I first read HRS 802-1 and 802-2 was January 11, 1979 [sic.], in prison here. I have attempted to notify you as promptly as possible.

Furthermore, HRS § 802-1(2) [sic.] essentially states that any person threatened by confinement, against his will, in any psychiatric or other mental institution or facility, shall be entitled to be represented by a public defender. I have been so threatened by the psychiatrist who examined me herein Keehi Amnex.

Lastly, HRS § 802-7, entitled "services

other than counsel" states that "Counsel, whether or not appointed by the court, for a defendant, who is financially unable to obtain investigatory, expert, or other services necessary for an adequate defense, may make a request for such services in an ex parte application." I feel I need such services for my defense of the 710-1077(g) [sic.] charge.

I would like a new trial. I feel that the outcome would have been vastly different had I had a trained lawyer to represent me. I had no knowledge of "rules of evidence" nor any experience in cross-examining, etc. I was under severe stress, and forgot to produce important evidence. I was unaware of my right to ask for a continuance of the trial so that I could produce actual witnesses instead of merely subpoenaing a police report as I mistakenly did.

I would also like to be immediately released from jail, to actively partake in my defense on the one hand, and because I am innocent of the charges and was denied a fair trial (because of no attorney for me) on the other hand.

Civil Rule 62B probably gives enough authority for my release from confinement, or Rule 60. Also HRS 603-21.7 and 603-21.9 may apply.

If a hearing is necessary, I ask for a hearing without delay, under HRS 660-24.

I would like to point out to you that you made an error in evidence. You said that you judged "the letters" were written by me because the type style of the letters was identical to that of the postcard. You are wrong. The type is clearly different, though they look similar at first glance. I did not notice your error until after the second hearing, when I read the letters at home, and checked out your statement. Under Rule 60B, that constitutes a basis for relief from judgment due to your error. But I emphasize I would like a new trial, in addition to mere relief from judgment.

I cannot properly make motions from prison, because I have no typewriter, copying machine, or method of filing.

Sincerely,

Donald D. Cowan
Defendant Pro Se - Civil 57584

APPENDIX L

Rule 48(b)(1) of *Hawaii Rules of Penal Procedure* provides:

> Except in the case of traffic offenses, the court shall, on motion of the defendant, dismiss the charge, with or without prejudice in its discretion, if trial is not commenced within 6 months from:
>
> (1) The date of arrest or of filing of the charge, whichever is sooner, on any offense based on the same conduct or arising from the same criminal episode for which the arrest or charge was made.

APPENDIX M

Letter written by Respondent to petitioner Shintaku after Shintaku re-imprisoned Repondent on February 5, 1980:

Dear Judge Shintaku:

I am confused at what law I was convicted of breaking. At a recent hearing [January 28, 1980] you said I was convicted of civil contempt, and was therefore not entitled to a lawyer. However, I do not know what the law number is that I broke, or where the authorized punishment for that particular civil contempt is listed. Here at Halawa, I do not have access to any HRS statute books. Please clarify specifically for me.

However, while at the annex [Keehi Annex Jail] I remember coming across a civil contempt law. My distinct impression is that the civil contempt law refers only to a refusal to perform a court-ordered action. And furthermore it refers only to your power to imprison me until I perform the court-ordered action. I think a mistake was made.

If this is true, then I ask that you declare a mistrial, and release me. For I am convinced that: (A) You in reality tried me for criminal contempt as defined in the HRS statutes; (B) You convicted me "on the basis of weighing the evidence," rather than on the required basis of proof beyond a reasonable doubt; (C) you imposed the punishment for HRS 710-1077(g)[sic.] (criminal contempt); (d) you did not assign me a lawyer as required under § 802-2 [sic.].

Please respond to this letter. I ask you now for all needed legal assistance, under HRS § 801-1 [sic.] thru HRS § 801-7. I need assistance in legal research, and for an appeal, if necessary (I don't know how to appeal.) (or 802-1 thru 802-7??).

Sincerely,

Doug Cowan
[Doug is Respondent's middle name which he ordinarily uses.]

APPENDIX N

After waiting several weeks for a response to the letter set forth in the preceding Appendix M, Respondent sent the following letter to the lawclerk of petitioner Shintaku:

Dear Lawclerk:

Please inform me of what law (HRS statute) I was convicted. (Civil contempt)

Also, please inform under which HRS statute you were authorized to give me 6 months in jail and a $500 fine.

I merely would like to read the law myself.

I assume that I was convicted of breaking an HRS statute. However, was I convicted of a non-HRS statute? Is there another set of laws somewhere? Please answer this letter. Without an attorney I cannot even find out this simple information.

Doug Cowan

P.S. I was under the impression that I was convicted of criminal contempt (710-1077(g)) [sic.]; however, two months into my sentence, Judge Shintaku said I was actually convicted of Civil Contempt. But I have no idea where this law is located, what HRS statute number.

APPENDIX O

The following is the transcript for the March 25, 1980, hearing before Judge Salz, the "fitness proceeding" in the assault third case pressed against Respondent on January 21, 1980 at the request of petitioner Shintaku. Because Respondent was in a state of shock from several things, including just being given a report that he was thought to be a schizophrenic and delusioning, and because Judge Salz was extremely prejudiced and overbearing because of ex parte communications with Petitioners prior to the hearing, and because his appointed public defender had betrayed him by asking for an insanity defense, the hearing and Respondent's statements were very unfair. Respondent had little time to think about what he should say. Therefore, in the interest of fairness, Repondent has inserted in brackets comments about what he was thinking, as well as extremely important observations about what Judge Salz and public defender were admitting with regards to ex parte communications made without the Respondent being present. Despite the comments in brackets, all that was said at the hearing is included from beginning to end.

MISS KURASHIGE: Cases 19A and 20A, Donald Cowan

MR GOYA: Donald Cowan is present with larry Goya, Deputy Public Defender. This is a hearing on fitness on Mr. Cowan. We [sic.--"I"] have discussed the case with Mr. Cowan yesterday at Hawaii State Prison, and my advice to him was to have a mental examination done.

He feels that he is not a person fit [sic.]--or not a person that should take a mental examination, Your Honor. And he has also informed me that he wishes to represent himself per se [sic.--court reporter didn't understand "pro se" term]. I feel that Mr. Cowan is a person that needs professional help, and--

[NOTE CLEARLY THE INCREDIBLE RESPONSE BY THE COURT, WHICH STARTS RIGHT IN ON THE RESPONDENT WITHOUT ASKING QUESTIONS, WHICH REVEALS EX PARTE DISCUSSIONS HAD WITH MR. GOYA WHEN RESPONDENT WAS NOT PRESENT, AND THE GIVING OF A PSYCHIATRIC REPORT TO JUDGE SZLZ WHICH WAS DENIED TO A DEFENDANT WHO DIDN'T WANT AN INSANITY DEFENSE. PRIOR TO THE FOLLOWING, JUDGE SALZ HAD NEVER SEEN OR

HEARD FROM THIS RESPONDENT, KNEW NOTHING WHATSOEVER ABOUT RESPONDENT EXCEPT WHAT LAWRENCE GOYA AND PETITIONERS HAD TOLD HIM EX PARTE.]

THE COURT: You *have spoken to me about this case before*, and I understand that Mr. Cowan has another three months at least to serve on the sentence that was passed on him by Judge Shintaku. *And I have also read Dr. Golden's letter which is on file in this matter* [How? By whom? Why hadn't Respondent seen it?], and it is the Court's very definite feeling that we're going to require a three-man board to examine Mr. Cowan.

Now, this is for your benefit, Mr. Cowan. *And you're already incarcerated under another Judge's order. So we're not holding you in jail. That is, this--when I say, we, this Court is not holding you in jail improperly and against your will.* You're there already.

And the Court on its own motion, due to the fact that you won't be making the motion yourself, the Court is empowered on its own motion to order that a study be made. [Already, without one single word or question spoken by Respondent, the judge issues his verdict based not on a required "reasonable hearing," but on the private communications of Goya and Petitioners herein to this judge.] Dr. Golden has already examined you, so I'm going to order at this time, under Section 704-440, that a three-man board be appointed. One of which--I would urge you, if you feel that you are being unfairly treated in this matter, that you have all your sense on a hundred percent basis, *the way to assist yourself, since you're in jail anyway, is to talk to these people whoa re experts in the field, and see if they can help you.*

Now, if you aren't a person who is fully within your senses, and in all respects, think you're fit to stand trial, and you do have the ability to control your actions so they conform with the law, *talk to these psychiatrists. Tell them what goes on in your mind and in your personal life, and your*

problems, and they are the kind of people that are people that can help you. So, trust them, so you won't waste *their* time because--

[HERE, RESPONDENT SPEAKS THE FIRST WORD HE HAS EVER UTTERED TO THIS JUDGE. Respondent is in a state of shock from first the letter he has just read, then the betrayal by Goya in asking for a mental irresponsibility defense against his will, then about the information that Goya has been speaking privately with the judge when Respondent, imprisoned, couldn't hear, represent himself, and fight back with calling his own witnesses. He has just been informed that Judge Salz knows all about his civil imprisonment, and artfully sidestepped responsibility for Respondent's civil imprisonment; and has just listened to this judge impose the insanity defense on him without one word from the defendant. Despite his shock, Respondent asks what is obviously an intelligent question.]

MR. COWAN: *Do I have an option to refuse?*

THE COURT: I *don't think* you have the option. Some people can be uncooperative. Look, if you decide that you're not going to talk, *nobody is going to break your arm. But what happens, is that* <u>*you simply will wind up continuously in custody on this kind of matter*</u>. [This is not information provided by a judge at a required reasonable hearing. It is a threat made by a judge who has made up his mind without ever having heard from the defendant. It would seem to respondent that what was called for at a required reasonable hearing is some setting forth of Defendant's version of the facts of the offense charged, then some corroborating or contradicting testimony from others, and then a decision by the judge of whether an insanity defense was a reasonable necessity under the circumstances. Here, Judge Salz is threatening the defendant without having any idea of what the facts are of the assault incident charged against Respondent. He's been talking to the public defender out of court, and talking with or having messages relayed to him about Pespondent's civil case by Petitioners herein, so that this judge has

made up his mind without yet asking one question of the defendant or having one word spoken to him by the defendant. The Court continues:]

It's kind of a mistreatment of yourself to refuse to cooperate that you will get you absolutely nowhere. ***These people can help you get out and can also help with your problems with Judge Shintaku.*** [This statement is strong evidence that Judge Salz has been urged to invoke the insanity plea for the assault third charge by Judge Shintaku, in private telephone or other communication. But the insanity defense is intended as a means to defend against a specific illegal act charged--i.e., the defendant is guilty except that at the time of the offense he was not mentally responsible, or that the defendant is not capable of understanding the charge against him and assisting in his own defense. The insanity defense is not to be used in this fashion as a convenient means to generally have a defendant in a civil case examined for the convenience of generally understanding a party in a civil dispute.] *Unless you enjoy the business of being in jail* [here's a blatant threat again that is no part of a required reasonable hearing, and Judge Salz' words are here beginning to seriously demoralize Respondent and make him feel helpless in defending himself], they can, if you cooperate with them, and you try to understand their point of view, and they try to understand yours, not only can help you with the judge who's handling the case, who will be sitting on this bench, may very well not be me.

The psychiatrist will also help you with Judge Shintaku, who has your case at the present time, and as I understand, you were given the option before Judge Shintaku to accept what examination or treatment you chose. On your part, you chose to spend time in jail. [Here, Judge Salz is revealing the real reason for the insanity defense in this assault third case--Respondent had refused to "voluntarily" see a psychiatrist, and so Judge Shintaku had asked that a charge be pressed against Respondent so that an

insanity defense could be imposed on him against his will, thereby, Petitioners thought, ensuring that Respondent would eventually be ruled insane and incarcerated in a mental hospital.] I would think this is beginning to get tiresome.

[At this point, after the above talking down to him by Judge Salz in asking if he had the right to resist the insanity defense being imposed on him, Respondent became completely demoralized. No longer did Respondent address the issues supposed to be discussed at a required reasonable hearing. Respondent here gave up, simply because Judge Salz was not granting him the right to be heard in his desire to avoid the insanity defense.]

MR. COWAN: It is tiresome.

THE COURT: You're not proving any points to anyone or anybody. And I would strongly urge you to take my advice in the matter, and cooperate with the doctors.

[Respondent in the following departs from attempting to avoid the insanity defense, because Judge Salz has appeared to make resistance not only futile but dangerous to himself in the form of "continuous incarceration."]

MR. COWAN: I would like to get a little information from you, if I can. [The following was intended to be a preamble to his questions, to state, for the first time, his position--but Judge Salz cuts him short before Respondent arrives at his point and the questions he wants to ask and the information he wants to get across to the judge.] My primary purpose is not to prove that I wasn't guilty, or to get off, my primary purpose is to somehow convince her that I love her and care about her, and would like to be cared for by her. And that's the bottom line. [Respondent reserves the right to make any principle as his bottom line, yet to have other goals, such as being acquitted for a charge of which he was innocent.] I'm willing if I find myself [convicted]--the bottom line is I'm willing to go to jail for an additional year or six months on that [if

convicted, after an ordinary trial on the merits of right to defense of property to the assault third charge. Before Respondent could clarify what he meant, he was interrupted by Judge Salz who thought Respondent meant that, instead, Respondent was somehow charging himself with assault third and jailing himself in a way intended to prove his love, or some other absurd idea Petitioners had put into his head.]

THE COURT: That's not going to sell Jeannie [this is the first use of Ms. Jeanette Spoone's nickname, "Jeannie," that was used in this hearing, and Judge Salz' familiar use of it makes Respondent suspect the judge may have talked, ex parte, directly to the complaining witness sometime prior to this proceeding] or anybody. Nobody in the world is going to be convinced by your willingness to stay in jail that you love her. All you're doing is forcing incarceration on yourself, and being a heavy financial burden on the State. And that is all that is being accomplished. Nothing more. [Here, the Court is going on a tangent, believing it knows that Respondent was somehow imprisoning himself in the assault-third case, when in fact Respondent was ready to go to trial on the defense of protection of property. But being communicated with out of court, without Respondent around to correct and defend himself, Judge Salz had preconceived ideas already made up, and he was guiding the required reasonable hearing entirely along this preconceived notion that Respondent wanted to stay in jail. As his letters written to Judge Shintaku show above, Respondent certainly did not want to stay in jail. This is why judges should not be communicated to ex parte by one side of a case without the presence of the defendant.]

MR. COWAN: I can't--that's the only communication with Jeannie that is left. And-- [Respondent was referring to his initial asking for the maximum sentence in the civil contempt case on December 11, 1979, when he had been ordered to jail for weekends in what seemed, and Respondent now knows, a highly unfair and illegal civil proceeding for criminal contempt of court. At that

time, with no other legal knowledge, communicating his sincerity by asking for the punishment seemed to be the only way of communicating. But again, Judge Salz, with preconceived notions made by ex parte communications with petitioners herein and others--he didn't inquire as to what Respondent meant--he charged ahead with conclusions he had formed before the hearing, not letting Respondent speak and clarify, but speaking down to a defendant before him who Judge Salz figured he "knew all about" by the ex parte communications of Peititoners.]

THE COURT: It's not a way that is left. It's a way that isn't left, and somehow you latched on to it. It's a very sad state of events that you should latch on to that.

[Again, Respondent was becoming very disillusioned with the way this "hearing" was being conducted on the question of insanity. Reacting in defensiveness to the accusations that Judge Salz was making, Respondent felt it necessary to explain to Judge Salz about the episode on January 28, 1979 when, at the release hearing before Judge Shintaku, Respondent had agreed, after being denied his request for legal counsel, to "voluntarily" seeing a psychiatrist as a condition of re-suspension of the imprisonment. Respondent tried to relate to Judge Salz that although he would not mind having the support of a psychologist on Respondent's side in this affair, nevertheless he did not want to be threatened by a false charge and refused to be controlled by a false charge threatened against him by deputy prosecutor Sandra Alexander at the request of Judge Shintaku. Respondent tried to explain why he had changed his mind about the "voluntary" seeing a psychiatrist (because it certainly wasn't voluntary under the circumstance of the threat). He even tried to show that he could look at the other side of the coin from how they might be looking at his psychology, and, without the advice of an attorney on what not to say in a hostile courtroom to a judge who'd already made up his mind before the proceeding, proceeded to relate some information he had gotten out of a book called, "Healing Love." This Christian book

(prisons like to place such books in prisons) explained that "psychotic" meant people who were angry, blamed others, and were depressed. Well, on that definition, Respondent being very angry at his imprisonment and denial of an opportunity to defend himself, blaming his predicament certainly on Ms. Spoone, prosecutor Sandra Alexander, the incompetence of petitioner Shintaku and petitioner Golden, and furthermore being very depressed, Respondent was willing before Judge Shintaku to intellectually admit he might be psychotic as that book had defined. Respondent did not mean that he was a schizophrenic, paranoid or delusioning, i.e., medically psychotic. And then Respondent started to defend his reasons for refusing to "voluntarily" see a psychiatrist. Again, Respondent was being led way off track by a judge who had made up his mind, announced the insanity defense as a foregone conclusion, announced Respondent might be continuously imprisoned in a matter like this unless he "cooperated" with the court-appointed psychiatrists. Respondent, virtually *pro se* in this extremely hostile courtroom proceeding, stupidly stated the following:]

MR. COWAN: I say I'm willing to admit that I'm psychotic. I've read some books [meaning just the Christian book called "Healing Love"] where the words in them have meaning for me to understand. And I'm willing to be treated [for depression and extreme anger he was now feeling]. In fact, I did make the offer in jail [Respondent meant at the January 28, 1980 hearing in which, though a hearing, he was still a prisoner not yet released.]

I was released on my voluntarily going to see a psychiatrist, and was going to be released from jail. And then I was--Sandra Alexander felt it important to threaten me with two new charges. They didn't get that [didn't get that no threat was necessary, that no threat may have resulted in Respondent's voluntarily seeing a psychiatrist, didn't get that Respondent changed his mind *because* he had been demeaned by a threat of a completely false assault-

third charge.] However, I was voluntarily [going to see a psychiatrist until they threatened me.]--

THE COURT: The Court can't take that into consideration now. The judge can't take into consideration the fact that you love somebody, and want to go to jail as a way to prove your love. [Somebody hadn't told Judge Salz that Respondent had written letters to Judge Shintaku asking for assisting in appealing his civil imprisonment, that he had asked public defender Larry Goya for assistance in getting out. Judge Salz had gotten his information by conducting a prior hearing ex parte among Petitioners herein, and ex parte, prior conversations with Mr. Goya who was in communication with prosecutor Sandra Alexander and Petitioners herein. Obviously, Respondent wanted to get out of jail, but Judge Salz wasn't informed of Respondent's efforts.] The Court system is not geared up to take that into consideration in dishing out a sentence [Respondent had not been sentenced for assault-third, let alone tried and convicted for the charge.]

You can see the Courtroom is very full. *We won't have time to discuss this. It's not my job to discuss this matter.* [A required reasonable hearing, however, is his job, and Judge Salz entirely messed it up by conducting ex parte, prior communications with Petitioners and others.] The people whose job it is to discuss these matters are the three members of the board that is being appointed to both examine you and to assist you. You can talk to them and perhaps work out some kind of counseling with them. Something of that nature perhaps could be worked out in some fashion. [Here, Judge Salz is admitting that psychiatric treatment is the entire goal of this assault third proceeding, not trial of Respondent on the merits of the incident which occurred on March 28, 1979. Trial was never intended. What was supposed to have occurred was simply the empaneling of three psychiatrists, and then their finding, before trial, that Respondent was insane, and then in lieu of trial a commitment of Respondent to a mental

institution until he finally "worked out" this "problem" with psychiatrists and released. But Respondent maintains that he had a right to choose his own defense, protection of his Vespa motorscooter, had a right to defend on the merits rather than by taking a mental irresponsibility defense, that Respondent had a right to a trial on a defense of his choosing. And, because Respondent was found to be completely sane, though stubborn, the argument of counsel for Petitioners herein that this insanity defense was a benefit intended for Respondent is absurd: Not allowing Respondent to choose his own defense to the assault-third charge was horribly destructive to Respondent's life and future reputation.]

That is your route to working something out to improve that general level of your life. That's all I can suggest to you. All I can say to you is I hope, rather than resisting it, you will work with them because that is the only way they are going to work towards solutions.

And the solution is not going to be proving your love to a lady who has already indicated that--as I understand, Jeannie has indicated--*from Dr. Golden*, Jeannie has indicated she has no further interest in you. So, if you prove something, prove that you love somebody who doesn't want you, you're just wasting your time. You've got to find other people in other directions for life. I hope you will be able to do that. [In the first place, obviously Judge Salz has been spoken to ex parte at least by petitioner Golden and given the information that Respondent was chasing her romantically, obviously implying that Respondent wanted to get back into a relationship with her. This was never true, and Respondent never said this to anyone. What Respondent at all times meant, when referring to proving to Ms. Spoone that he loved her, was to somehow find a legal solution to his being called to court to defend against ridiculous claims of violating an injunction that were not true, and Respondent's belief, because he didn't know enough law to protect himself from these civil show cause hearings, that the only way

to defend himself was to make Ms. Spoone stop her vicious, practically psychotic legal attacks against Respondent in petitioner Shintaku's court. In short, let Ms. Spoone get enough kicks in punishing Respondent and get it out of her system, and perhaps, by his December 11, 1979, request for the maximum sentence imposed on him, to reach Ms. Spoone in her psychosis and make her understand that Respondent was not an enemy of hers, but that he loved her--then Ms. Spoone might possibly stop making ridiculous claims against Respondent in Court through her attorney.]

MR. COWAN: What I want to--I'm willing to be treated. [But not really, under threat, as can be seen by the next question.] If I refuse to cooperate in this examination, *can I be held indefinitely in jail, or just for a maximum of one year that I'm sentenced?* [If convicted for assault third. Obviously, Respondent was listening to Judge Salz, and now was getting back on track as to how to avoid an insanity defense he did not want.]

THE COURT: I can't even attempt to handle Judge Shintaku's case you're talking about. [Judge Salz isn't listening--the one year meant one year's possible sentence of imprisonment for the assault third case pending before Judge Salz.] And that's not your problem. [The illegal six months of civil imprisonment isn't Respondent's problem?] Your problem is right now, right now, *if you're willing to accept treatment, you could probably voluntarily*--I don't know [he's trying to avoid admitting that he's been talking to Judge Shintaku about Respondent's civil case, and avoid admitting on the record the agreement with Judge Shintaku that if Respondent will accept the insanity defense, that Respondent could be released early from Judge Shintaku's civil imprisonment. Corroboration follows:] ***You probably could work out some way with Judge Shintaku where you could go to Hawaii State Hospital instead of staying in prison and being taking treatments which would make you fit to come back into the world, instead of staying in jail.***

You've shifted away. Sort of hidden yourself away, rather than facing up to the fact that somebody that you love, doesn't want you. [Nice theory, but Respondent would preferred to have been tried and acquitted on the merits of an assault-third charge.] You've got to recognize the world is full of people. You've isolated yourself to where there were only two people in the world. [He thinks he knows all about Respondent and his case with Ms. Spoone--but he certainly didn't get the information in open court, in testimony tested by cross-examination.] I've got news for you. Look around and you will see that's not true.

Now, your route to solving your problems, is the three-man board that we have appointed. So, ***if you want to try to work things out even sooner, there is nothing to stop you from talking to Dr. Golden, who is there at Halawa, in case you want to go and talk to him***. [It's just convenient for Judge Salz that Respondent was being held, illegally in a civil case, by petitioner Shintaku, and certainly not against Respondent's will by Judge Salz.]

I'm not going to make any predictions about what the other judge will do [he doesn't have to predict, having been told point blank by petitioner Shintaku, ex parte, what Shintaku would do]. *I'm simply going to furnish you [he means furnish Petitioners herein] with the three psychiatrists who can work with you and talk to you, **suggesting ways of treatment** [Respondent thought he was first supposed to be examined and a determination made as to his fitness to be tried on the assault-third incident of March 28, 1980]. And mostly try to end this quirk that you've got. You want to prove something to somebody who isn't looking, and--*

MR. GOYA: If I may say that I talked with Dr. Golden yesterday, and he suggested that maybe the best way of handling this situation would be with a three member board. But if Mr. Cowan could be transferred to Hawaii State Hospital and be treated while he's being evaluated--[Thanks, Mr. Goya--I'm real

happy you're on my side. And by the way, what on earth do you mean by "treatment." Obviously, Mr. Goya is here revealing the whole scheme devised on February 5, 1980, of which scheme has a verbatim transcript {but Respondent was denied a copy of the transcript by the court reporter until after his civil case had been summarily dismissed in Circuit Court, and an attempt to have it made a part of a Supplemental Record on Appeal in the Hawaii Supreme Court was denied}. At no time did petitioners ever plan to have the assault-third case go to trial. Respondent was presumed to be insane, and it was presumed he would be found insane before trial, committed to a mental institution before trial but after acquittal by reason of insanity. No consideration was ever given by Judge Salz or Petitioners communicating ex parte with Judge Salz of allowing Respondent to proceed to trial on the merits of having his property seized by two persons, running away assault of his person until he finally had to act, in obvious, completely legal use of force against someone tried to destroy property of his valued at approximately $1,500.00. Mr. Goya, after talking ex parte with Petitioners, never had the slightest intention of defending Respondent--he was the servant boy of Petitioners, a token public defender, who showed which side of the fence his heart was really on when he shortly after became a prosecuting attorney and a new public defender was appointed in the case.]

THE COURT: I can't transfer him to Hawaii State Hospital because judge Shintaku--I'd like to have that three-man board. I'm going to order this three-man board. *If Judge Shintaku would like to adopt this three-man board as his board also, and order him to be transferred to Hawaii State Hospital for treatment during the remainder of the term. That would be a real splendid idea. Now, I want you to listen very carefully to Mr. Goya.* [Obviously, no consideration was made by Judge Salz that Respondent had such serious differences with Mr. Goya, that Mr. Goya, in fairness to Respondent, should have been removed as counsel and someone else appointed. But of course, Judge Salz had

communicated ex parte with Petitioners herein and was fully a partner in the plan, before this required reasonable hearing, of imposing an insanity defense upon Respondent for the purpose not of the assault third trial, but as a general means of incarcerating Respondent in a mental institution without a trial. So obviously, Judge Salz thought it was just fine and dandy that a token public defender, a timid pawn eager to do the bidding of other State employee's, particularly the bidding of state judge Shintaku, "represent" Respondent. It is disillusioning that someone licensed to be an attorney can so miserably misunderstand the lawyers Code of Professional Conduct, and still be allowed to set foot in a courtroom as a representative of someone else.]

END OF PROCEEDING BEFORE JUDGE SALZ ON MARCH 25, 1980

APPENDIX P

Memorandum from petitioner Shintaku to the imprisoned Respondent dated April 1, 1980:

> I *understand* Mr. Larry Goya ... is now representing you. Under those circumstances ***all communications to the court must come through Mr. Goya***. That is the reason why I have not communicated with you up to this point. [The real reason is that he didn't want to answer Respondent's questions and appoint counsel for Respondent in the civil imprisonment matter. It should be made clear that petitioner Shintaku did **not** appoint Lawrence Goya to represent Respondent in the civil matter. Petitioner Shintaku's use of the words, "I understand" simply are a vague way of evading responsibility to appoint counsel for Respondent in his civil imprisonment case. It is a ruse, on paper, to appear to be proceeding legitimately in his civil imprisonment of Respondent.] ... I hope you will heed his [Goya's] advice. [Again, it is obvious that Goya's role as public defender was to be petitioner Shintaku's pawn. Goya did not lift a finger to assist Respondent in winning release from unlawful imprisonment.]

APPENDIX O

[DR. GOLDMAN'S REPORT, IN RELEVANT PART]

> At the time of the alleged offense, it is the opinion of this writer that the defendant was not suffering from a mental disease, disorder or defect, and therefore his cognitive and volitional capacities were in no way diminished.
>
> The defendant showed substantial naivety, obsessive features, but no ongoing psychosis. There is a neurotic process based on his adamant position-taking, but nothing to suggest that defendant lacked control of any of the mental faculties necessary to conform his behavior to the confines of law. Other than the unwillingness to be compromised, and the extreme means by which the defendant chose to assert his independence from both rejection and pressure from others, there is little to support Dr. Golden's opinion of delusional process or paranoid state.

APPENDIX B

[DR. KNIGHT'S REPORT IN RELEVANT PART]

1) The diagnosis now and at the time of the alleged offense is Obsessive Neurosis, with borderline and depressive features.

2) The defendant has the capacity to understand the proceedings against him and to assist in his defense.

3) At the time of the alleged offense, the defendant lacked the capacity to appreciate the wrongfulness of his conduct [Dr. Knight cannot declare that defending one's $1,500.00 Vespa motorscooter from being thrown over the edge of a concrete-bottomed ditch, by his single, restrained instance of force, is "wrongfulness of conduct"--self-defense against destruction of one's property is authorized specifically by Hawaii statute, § 703-306, *Hawaii Rev. Stat.*] and to conform his behavior to the requirements of the law. [Again, use of force to protect one's property is behavior conforming to the law, § 703-306, *Hawaii Rev. Stat.* This statement Respondent would have liked an opportunity to contest.] ***I believe that the defendant never intended to commit any offense,*** and that he was obsessed with a need only to justify his previous behavior [What she is talking about is unclear to Respondent]. ***It should be noted that the equally obsessive behavior of the complaining witness [Ms. Spoone] was an indispensable ingredient in the escalation of this conflict.***

APPENDIX S

[DR. KO'S PSYCHIATRIC REPORT, IN RELEVANT PART]

> On the basis of this interview, my diagnosis of the defendant is Obsessive-compulsive Personality.
>
> It is also my conclusion that the defendant is capable of understanding the nature of the proceedings against him and of assisting in his own defense.
>
> ***Although I would agree with Dr. Knight's opinion "that the defendant never intended to commit any offense,*** and that he was obsessed with a need only to justify his previous behavior" [Respondent has been given no idea what these people mean--obviously, as part of the examination, they have talked with other people and been told a story without any cross-examination to prove or disprove the truth of what these psychiatrists were told.], I do not feel that his cognitive or volitional capacities were substantially impaired at the time of the alleged [thank you to this psychiatrist for using the word "alleged"] offenses.

CLEAN PRINT OF CORRECTED PAGES

OF THE APPENDIX TO RESPONDENT'S RESPONSE TO PETITION

RESPONDENT'S APPENDIX

Criminal Solicitation:

> (2) It is immaterial under subsection (1) that the defendant fails to communicate with the person he solicits if his conduct was designed to effect such communication.

Though Ms. Spoone claimed she was only trying to scare away Defendant, so as to avoid a confrontation between Defendant and Ellison, in truth her throwing the rock was immediately followed by Ellison chasing Defendant, and Ms. Spoone had not and did not call the police.

Terroristic threatening, harassment and assault in the third degree, and in the second degree, are also obvious crimes. Attempts to commit a crime are also crimes.

It is important that the Court note that by Ms. Spoone's testimony, Defendant received an injury before she was punched by Defendant later on in the action. (30, lines 4-8)

III. FURTHER EXCERPTS FROM THE TRANSCRIPT OF THE JULY 10, 1980 PROCEEDING AGAINST DEFENDANT, WHICH VERDICT WAS SET ASIDE.

SPOONE: ...I told my husband, let's push the motorscooter into the garage so that the police could catch him. (36, lines 1-3)

FUKUHARA: Did you tell Donald that you had called the police? (35, line 22)

SPOONE: No. (35, line 23)

FUKUHARA: But the police had not been called? (36, line 4)

SPOONE: That's true. (36, line 5)

SPOONE: I went to push the motorscooter. It

ELLISON: ...I have been trying to remember how in the world he got by me to hit her. I'm really fuzzy on that. (44, lines 6-8)

ELLISON: ...At this point, she tried to push the motorscooter, and she was unable to. Jeannie couldn't push it, and she released her hand from it. I turned to, I think at this point my memory is a little fuzzy about that particular time frame, and then I turned back around...(39, lines 3-7)

SPOONE: ...It wouldn't move...and by this time the guys were running back towards the motorscooter, Doug ahead of my husband...then Doug came running up and hit me...(30, lines 14-19)

FUKUHARA: Now, was both Jeannie and her husband both right against the bike? (49, lines 17-18)

BELCHER: They were standing on one side of the bike together, and Doug was standing on the other side of the bike, and I would say they were all in very close proximity. Everyone was right next to each other. (49, lines 19-22)

YOUNG: And approximately how long did this happen? Was it a minute or two minutes that you were watching this?

BELCHER: Possibly a minute, maybe it was that long.

FUKUHARA: As you were backing out in your van,

obvious reason that a conspiracy to commit perjury is present and ongoing, and such analysis now might aid them.

Even with the lying that all three of them are doing, it can still be proven, from their own testimony, that Ellison and Spoone, after violently assaulting Defendant, were standing in the proximity of the motorscooter, right next to it, with Ellison and Spoone on one side and Defendant on the other. It is proven that Spoone did attempt to push the motorscooter, and by Ellison's testimony she pushed it one and one half feet. This is not to say that Ellison and Spoone are not lying through their teeth--they are. But proving that they are lying is trial stuff this Defendant doesn't want to get into in this memorandum.

It is proven that Defendant did not strike anyone until after the motorscooter had been pushed by Spoone. It is proven that Ellison was Spoone's accomplice in that, at least, he was protecting her while she was pushing it, by his own testimony. We especially know that Spoone, the Complainant, is lying. We know this from this testimony that all three of them are "hazy" regarding events in this one critical minute of action. Notable is that witness Belcher, claiming he had a good ringside seat, with good lighting, and a large rear view mirror, "didn't see" Ellison chasing Defendant, or Spoone attempting to push or actually pushing Defendant's motorscooter one and one half feet--even though Ellison and Spoone testified that this had occurred.

V. FURTHER EXCERPTS FROM THE TRANSCRIPT OF THE JULY 10, 1980 PROCEEDING AGAINST DEFENDANT, WHICH VERDICT WAS SET ASIDE.

ELLISON: ...I had heard her being hit because it

without counsel, attempted to defend himself, and typed an answer to the Complaint as required on the Summons. A hearing for the injunction was held by Judge Arthur Fong. At the hearing, Spoone told essentially the same story that she had told to police, i.e., that she went to talk with your Affiant, and that your Affiant had suddenly struck her. Your Affiant then told the same story that is related in this affidavit. Judge Fong then said, "There are two different stories here," and he set a hearing date for a permanent injunction.

31. Your Affiant, while preparing for the hearing, was suffering from a fractured arm in a cast, severe depression, and was faced with the immediate problem of fixing his only transportation immediately before too much corrosion set in, or lose it forever. Your Affiant was without transportation to go and seek legal help, and was suffering a great amount of pain, and therefore he called attorney Roney and agreed to sign an injunction without a hearing.

32. Attorney Roney then drafted the injunction and your Affiant went to his office. Your Affiant was surprised that there was a "findings of fact" involved, as his impression was he was simply going to agree to sign an "agreement" or "contract" without a hearing. He objected upon reading the Findings of Fact to Roney that the Findings of Fact were false in very large part and he expressed reluctance to sign. Roney then reminded your Affiant, "You remember what Judge Fong was like. I talked to him and said he might not let you stipulate." Your Affiant,

remembering Judge Fong's harsh demeanor, and fearing that Roney meant Judge Fong might impose some unstated severe penalty upon your Affiant, signed the stipulation.

* * *

34. Subsequently, on July 23, 1979, your Affiant was summoned as a defendant in Civil no. 57584 to Judge Shintaku's court to show why he should not be held in contempt of the injunction; your Affiant could not afford counsel and was forced to appear by himself without counsel to assist him.

35. Your Affiant did not realize that the hearing on that motion was going to be a trial. Nevertheless, he was frightened and sought counsel from the Public Defenders Office, from Legal Aid Society and from two private attorneys between July 24, 1979 and July 27, 1979, i.e., between service upon him and trial, and was unsuccessful in securing counsel for lack of funds with the two private counsel, and for official reasons from the Public Defenders Office and Legal Aid Society.

36. That your Affiant appeared as ordered on July 27, 1979 in SHINTAKU's court room, with no attorney present to advise or assist him.

37. That your Affiant was asked by SHINTAKU if he was representing himself. Your Affiant responded, to the best of his recollection, by informing SHINTAKU about his unsuccessful attempts to obtain counsel from the Public Defenders Office and from Legal Aid Society and from the private attorneys. Your Affiant specifically remembers saying, to the best of his

capabilities. ...

60. Your Affiant felt extremely frustrated and helpless. Regarding the prospect of going to jail every Friday night and spending the weekend at Halawa [jail], your Affiant thought that a six-months' previously assessed sentence, worked off at the rate of two days per weekend, would result in imprisonment on weekends for a very long time. Your Affiant believed that the best way to serve his already assessed sentence would therefore be to serve it in a single, uninterrupted block of time, so that he would risk losing his job through defamation only once, rather than once a week.

61. Your Affiant did not at the time, on December 11, 1979, realize that the proceedings were utterly unlawful, and was simply dismayed. Your Affiant had no knowledge of any defense available to him.

62. ... Your Affiant did not know the existence of H.R.S. [Hawaii Revised Statutes] §706-627 mandating representation by counsel at a suspension-revocation hearing, and other rights.

* * *

64. Your Affiant then, feeling completely frustrated and helpless, asked the Court to assess the maximum period of imprisonment, meaning, the full six months already assessed. Your Affiant did not want to go to jail--but facing the beginning of spending time in jail, your Affiant chose a solid block of six months imprisonment over spending weekends in jail adding up to a

Affiant would truly liked to have done this. GOLDEN replied that he would talk to SHINTAKU about it, but said, "I think some teeth should be put in it." Your Affiant specifically remembers this remark by GOLDEN in connection to his release from jail. A few days later, on or about January 21, 1980, your Affiant was served at Halawa jail with a charge for Assault and Battery in the Third Degree--the "teeth" had apparently arrived. ...

80. Your Affiant recognized immediately the attempt to control him by the threat of the Assault Third charge [for a description of the incident charged, see Appendix "A", p.1 herein which are statements made under oath by Ms. Spoone and her two "witnesses"; also see paragraphs 23 through 29 in this Appendix "B", p.17], and was very angry at the threat by a charge for an assault incident in which he himself had been the victim, had his arm broken, and had his $1,500.00 Vespa motorscooter soon after destroyed. So when guards, on January 28, 1980, took him from the medical module and drove him to SHINTAKU's court chambers for a hearing, he was not very pleased--he was really angry at the false charge.

81. At the January 28, 1980 civil hearing were prosecutor ALEXANDER, GOLDEN, Kuniyuki, a law clerk of SHINTAKU's, an attorney Pang who was merely there to assist Kuniyuki who couldn't help being late for ten minutes, SHINTAKU and your Affiant. Your Affiant was not represented by counsel. The hearing opened with SHINTAKU addressing ... your Affiant's letter [see Appendix K, p.54 herein] request to appoint counsel

in custody on this kind of matter." [see Appendix K, p.60 herein]. Your Affiant remembered [these words of Judge Salz] back in his cell block after the March 25, 1980 "fitness" hearing, and his words had a profound effect on enlarging the sense of legal helplessness your Affiant experienced. The general duress in the second floor cellblock, coupled with GOYA's betrayal of him, coupled with Judge Salz' dire warnings of "continuous custody" if your Affiant refused to cooperate with the psychiatric examinations, finally culminated in your Affiant briefly giving in and writing to SHINTAKU that he was now willing to be transferred to Kaneohe [mental hospital] if he liked, and would even waive a hearing. Your Affiant was terrified, and feeling utterly helpless. He had given up all hope of legal help in the civil imprisonment, and now just wanted to end the ordeal in Oahu Community Correctional Center.

107. But your Affiant's giving up lasted one night, and immediately upon awakening the next morning after sending the letter he wrote another letter asking SHINTAKU to consider the first letter [of the day before] "null and void." ...

* * *

108. ... GOYA, however, placed the Public Defenders name and his own name [even though never appointed by Judge Shintaku] on your Affiant's Civil No. 57584 as your Affiant's civil case attorney, and filed for an amended order of disposition sending your Affiant to Kaneohe State Hospital. And the next day, GOYA filed a motion stating that your Affiant

"hereby gives notice of intention to rely on the defense of mental irresponsibility," and signed an affidavit stating that he believed your Affiant was suffering from a mental disease "which may adversely affect Defendant's capacity to understand the proceedings against him to assist in his own defense," though your Affiant at no time ever told Goya he wanted to use an insanity plea, and flatly forbade Goya to use an insanity plea.

109. Your Affiant was thus completely ignored by SHINTAKU and GOYA and transferred to Kaneohe State Hospital [as part of his civil imprisonment] "to determine your Affiant's mental capabilities." At Kaneohe State Hospital, your Affiant was stripped and put into white pajamas typical of insane asylums. He was then immediately interviewed by the on-duty psychiatrist, who very shortly after beginning his interview stated that he couldn't believe GOLDEN had recommended your Affiant be sent to Kaneohe [Mental] Hospital, that your Affiant was obviously sane. He indicated negative feelings about GOLDEN's capabilities as a psychiatrist...

* * *

111. Your Affiant had no problems at Kaneohe [State mental hospital].

112. While in white insane asylum pajamas your Affiant was interviewed by Dr. Ko as the first of the three-member panel examination, and the interview occurred while your Affiant was still in solitary confinement [every person coming into the facility is placed, as standard operating procedure, in an all-

APPENDIX K

Letter written on January 12, 1980, postmarked January 21, 1980, requesting appointment of counsel, release on writ of habeas corpus, and a new trial with the assistance of counsel:

Dear Judge Shintaku:

HRS § 802-1 states essentially that any indigent person arrested, charged or convicted of an offense punishable by confinement in jail is entitled to representation by public defender or other appointed counsel. At the time of my trial I was an indigent person (and I still am), and the offense I was charged with and convicted of, HRS 710-1077(g) [sic.], was punishable by 6 months imprisonment. Therefore I was entitled to representation by appointed counsel at that trial. And at the opening of that trial I informed you that "I am appearing very reluctantly as Defendant Pro Se...I do not have enough money to hire an attorney..."

HRS § 802-2 states "In every criminal case or proceeding in which a person entitled by law to representation by counsel appears without counsel, the judge shall advise him of his right to representation by counsel and also that if he is financially unable to obtain counsel, the court may appoint one at the cost to the state." In my trial you neither advised me of that right nor appointed counsel to me or referred me to the Public Defender's office.

The date I first read HRS 802-1 and 802-2 was January 11, 1979 [sic.], in prison here. I have attempted to notify you as promptly as possible.

Furthermore, HRS § 802-1(2) [sic.] essentially states that any person threatened by confinement, against his will, in any psychiatric or other mental institution or facility, shall be entitled to be represented by a public defender. I have been so threatened by the psychiatrist who examined me here in Keehi Annex.

Lastly, HRS § 802-7, entitled "services

HEARD FROM THIS RESPONDENT, KNEW NOTHING WHATSOEVER ABOUT RESPONDENT EXCEPT WHAT LAWRENCE GOYA AND PETITIONERS HAD TOLD HIM EX PARTE.]

THE COURT: *You have spoken to me about this case before*, and I understand that Mr. Cowan has another three months at least to serve on the sentence that was passed on him by Judge Shintaku. *And I have also read Dr. Golden's letter which is on file in this matter* [How? By whom? Why hadn't Respondent seen it?], and it is the Court's very definite feeling that we're going to require a three-man board to examine Mr. Cowan.

Now, this is for your benefit, Mr. Cowan. *And you're already incarcerated under another Judge's order. So we're not holding you in jail. That is, this--when I say, we, this Court is not holding you in jail improperly and against your will.* You're there already.

And the Court on its own motion, due to the fact that you won't be making the motion yourself, the Court is empowered on its own motion to order that a study be made. [Already, without one single word or question spoken by Respondent, the judge issues his verdict based not on a required "reasonable hearing," but on the private communications of Goya and Petitioners herein to this judge.] Dr. Golden has already examined you, so I'm going to order at this time, under Section 704-440, that a three-man board be appointed. One of which--I would urge you, if you feel that you are being unfairly treated in this matter, that you have all your senses on a hundred percent basis, *the way to assist yourself, since you're in jail anyway, is to talk to these people who are experts in the field, and see if they can help you.*

Now, if you aren't a person who is fully within your senses, and in all respects, think you're fit to stand trial, and you do have the ability to control your actions so they conform with the law, *talk to these psychiatrists. Tell them what goes on in your mind and in your personal life, and your*

You've shifted away. Sort of hidden yourself away, rather than facing up to the fact that somebody that you love, doesn't want you. [Nice theory, but Respondent would have preferred to have been tried and acquitted on the merits of an assault-third charge.] You've got to recognize the world is full of people. You've isolated yourself to where there were only two people in the world. [He thinks he knows all about Respondent and his case with Ms. Spoone--but he certainly didn't get the information in open court, in testimony tested by cross-examination.] I've got news for you. Look around and you will see that's not true.

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